

25 Am. Jur. 2d Duress and Undue Influence Summary

American Jurisprudence, Second Edition | May 2021 Update

Duress and Undue Influence

Marie K. Pesando, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses the concepts of duress and undue influence as they relate to civil actions. The article includes discussion of what constitutes duress or undue influence; the elements, requisites, and factors considered in determining the existence of duress or undue influence; threats as constituting duress; persons by, on, or through whom duress may or must be exercised; undue influence by third persons; the general effect of duress and undue influence; rescission or avoidance of transactions and contracts on the ground of, and ratification of, duress or undue influence; and the practice and procedure applicable to the assertion, denial, or proof of the existence of duress or undue influence.

Treated Elsewhere:

Abduction and kidnapping, duress as defense to, see [Am. Jur. 2d, Abduction and Kidnapping § 57](#)

Adoption of children, duress and undue influence in obtaining natural parent's consent to, see [Am. Jur. 2d, Adoption § 106](#)

Annuities, duress as grounds for cancellation or rescission of, see [Am. Jur. 2d, Annuities § 9](#)

Annulment of marriage on ground of duress, see [Am. Jur. 2d, Annulment of Marriage §§ 24, 25](#)

Attorneys, duress and undue influence by, see [Am. Jur. 2d, Attorneys at Law §§ 143, 144, 146, 251, 254](#)

Bigamy, duress as defense to accusation of, see [Am. Jur. 2d, Bigamy § 24](#)

Bills and notes, coercion or undue influence in connection with, see [Am. Jur. 2d, Bills and Notes §§ 122, 374, 562, 563](#)

Bonds and undertakings as affected by undue influence, see [Am. Jur. 2d, Bonds § 16](#)

Breach of promise of marriage, duress as defense in action for, see [Am. Jur. 2d, Breach of Promise § 7](#)

Cancellation of instruments on grounds of duress and undue influence, see [Am. Jur. 2d, Cancellation of Instruments §§ 22 to 26](#)

Clean hands doctrine, see [Am. Jur. 2d, Equity § 100](#)

Compromise and settlement agreements, duress and undue influence as affecting, see [Am. Jur. 2d, Compromise and Settlement §§ 34, 35](#)

Confession, duress in obtaining, see [Am. Jur. 2d, Evidence §§ 756, 737 to 740, 752](#); and [Am. Jur. 2d, Habeas Corpus §§ 1 et seq.](#)

Contracts, duress and undue influence as grounds for invalidating, see [Am. Jur. 2d, Contracts §§ 218, 221](#)

Criminal law, effect of duress or coercion in the field of, generally, see [Am. Jur. 2d, Criminal Law §§ 142 to 148, 602 to 604](#); and [Am. Jur. 2d, Extortion, Blackmail, and Threats §§ 1 et seq.](#); and [Am. Jur. 2d, Rape §§ 3, 4, 8](#); and [Am. Jur. 2d, Robbery § 44](#)

Deeds, validity of as affected by duress or undue influence, see [Am. Jur. 2d, Deeds §§ 173 to 184](#)

Defamation, effect in actions for, of coerced republication of defamatory statement by person defamed, see [Am. Jur. 2d, Libel and Slander § 227](#)

Divorce, duress as ground for, see [Am. Jur. 2d, Divorce and Separation § 97](#)

Employer and employee, presumption of duress in case of contract between, see [Am. Jur. 2d, Employment Relationship § 13](#)

Guaranty, economic duress as defense to enforcement of, see [Am. Jur. 2d, Guaranty § 42](#)

Insurance policy, duress, and undue influence in connection with assignment or change of beneficiary, see [Am. Jur. 2d, Insurance §§ 795, 1725](#)

Marriage, validity of, if contracted under duress, see [Am. Jur. 2d, Marriage § 30](#)

Mortgage, effect of duress or undue influence upon validity of, see [Am. Jur. 2d, Mortgages §§ 15, 17](#)

New trial based on coercion or intimidation of jury, see [Am. Jur. 2d, New Trial §§ 200, 223](#)

Novation, effect of economic duress on, see [Am. Jur. 2d, Novation § 12](#)

Parent and child, undue influence as affecting transfers between, see [Am. Jur. 2d, Parent and Child §§ 85 to 87](#)

Powers of appointment, undue influence in exercise of, see [Am. Jur. 2d, Powers of Appointment and Alienation § 166](#)

Prenuptial agreements, effect of duress or undue influence upon validity of, see [Am. Jur. 2d, Husband and Wife § 127](#)

Public officer's or employee's resignation under duress, voidability of, see [Am. Jur. 2d, Public Officers and Employees § 157](#)

Release, effect of duress and undue influence upon validity of, see [Am. Jur. 2d, Release § 26](#)

Restitution of payments made under duress, generally, see [Am. Jur. 2d, Restitution and Implied Contracts §§ 19, 97 to 108](#)

Seduction as undue influence, see [Am. Jur. 2d, Seduction § 5](#)

Specific performance of contract procured by duress or coercion, see [Am. Jur. 2d, Specific Performance § 16](#)

Surety, discharge of, on ground that principal's obligation was assumed under duress, see [Am. Jur. 2d, Suretyship § 78](#)

Taxes, effect of payment of undue duress, see [Am. Jur. 2d, State and Local Taxation § 973](#)

Wills, undue influence in making of, see [Am. Jur. 2d, Wills §§ 356 to 378, 392 to 451](#)

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[American Jurisprudence 2d \(AMJUR\)](#)

[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)

[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

[Restatement of the Law—Contracts \(REST-CONTR\)](#)

[Uniform Laws Annotated \(ULA\)](#)

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25 Am. Jur. 2d Duress and Undue Influence I A Refs.

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I. Duress

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1), 95(2)

West's Key Number Digest, [Payment](#)  87(1), 87(2), 87(3), 87(5)

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A.L.R. Index, Duress and Coercion

A.L.R. Index, Undue Influence

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25 Am. Jur. 2d Duress and Undue Influence § 1

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Duress and Undue Influence

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I. Duress

A. In General

§ 1. Generally; definitions

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West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1)

A.L.R. Library

[What Constitutes Duress by Employer or Former Employer Vitiating Employee's Release of Employer from Claims Arising out of Employment, 79 A.L.R.6th 377](#)

A number of courts have defined duress in terms of interference with free will.¹ For example, it has been held that duress exists if one person is induced by the unlawful or wrongful act or threat of another to make a contract under circumstances that deprive that person of the exercise of free will.² Similarly, “duress” has been defined as a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes the person to do an act or form a contract not of his or her own volition.³ Indeed, it has been stated that the classical or common law definition of “duress” is any wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his or her volition.⁴

Observation:

As a practical matter, a claim of undue duress is essentially a claim that an agreement was not signed voluntarily.⁵

The Restatement defines “duress” as a wrongful act that involves physically compelling conduct that appears to manifest assent by a party who does not intend to engage in such conduct⁶ or, alternatively, as making an improper threat that induces a party without a reasonable alternative to manifest his or her assent.⁷

It has been held that duress has these three elements: (1) one side involuntarily accepts the terms of another; (2) the circumstances permit no other alternative; and (3) the opposite party’s coercive acts cause those circumstances.⁸ Similarly, it has been held that duress has these three elements: (1) a wrongful act which (2) overcomes the will of a person who (3) has no adequate legal remedy to protect his or her interest.⁹ However, it has also been held that duress also requires a fourth element: the resulting transaction is unfair to the victim.¹⁰ It has also been stated that duress consists of five elements: (1) a threat or action taken without legal justification; (2) the action or threat was of such a character as to destroy the other party’s free agency; (3) the threat or action overcame the opposing party’s free will and caused it to do that which it would not otherwise have done and that which it was not legally bound to do; (4) the restraint was imminent; and (5) the opposing party had no present means of protection.¹¹

The Uniform Commercial Code provides that, unless it is displaced by particular provisions of the Code, the law of duress and coercion supplements its provisions.¹²

The rationale of the doctrine of duress is to discourage or prevent an individual in a stronger position from abusing that power by presenting an unreasonable choice of alternatives to another person in a weaker or more vulnerable position, in a bargaining situation.¹³

Observation:

Given that the doctrine of duress is usually asserted when a person knowingly violates a legal duty, courts rightly employ duress sparingly.¹⁴

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Footnotes

¹ [Bennett v. Coors Brewing Co.](#), 189 F.3d 1221 (10th Cir. 1999) (applying Colorado law); [TECH USA, Inc. v. Evans](#), 592 F. Supp. 2d 852 (D. Md. 2009) (applying Maryland law); [In re Vargas Realty Enterprises, Inc.](#), 440 B.R. 224 (S.D. N.Y. 2010) (applying New York law); [Kruse v. City of Birmingham](#), 67 So. 3d 910 (Ala. Civ. App. 2011); [Mullins v. Oates](#), 179 P.3d 930 (Alaska 2008); [Hopper v. Garner](#), 328 Ark. 516, 944 S.W.2d 540 (1997); [Woodruff v. TRG-Harbour House, Ltd.](#), 967 So. 2d 248 (Fla. 3d DCA 2007); [Hampton Island, LLC v. HAOP, LLC](#), 306 Ga. App. 542, 702 S.E.2d 770 (2010); [Bank of America, N.A. v. 108 N. State Retail LLC](#), 401 Ill. App. 3d 158, 340 Ill. Dec. 323, 928 N.E.2d 42 (1st Dist. 2010); [Wagler v. West Boggs Sewer Dist., Inc.](#), 980 N.E.2d 363 (Ind. Ct. App. 2012), transfer denied, 989 N.E.2d 338 (Ind. 2013) and cert. denied, 134 S. Ct. 952 (2014); [Estate of Davis v. O’Neill](#), 42 So. 3d 520 (Miss. 2010); [Duane Morris LLP v. Astor Holdings Inc.](#), 61 A.D.3d 418, 877 N.Y.S.2d 250 (1st Dep’t 2009); [Gainey v. Gainey](#), 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009); [McCord v. Goode](#), 308 S.W.3d 409 (Tex. App. Dallas 2010).

² [Rissman v. Rissman](#), 213 F.3d 381 (7th Cir. 2000) (applying Illinois law); [Duma v. Unum Provident](#), 770 F. Supp. 2d 308, 79 Fed. R. Serv. 3d 264 (D.D.C. 2011) (applying District of Columbia law); [Ariel Preferred Retail Group, LLC v. CWC Capital Asset Management](#), 883 F. Supp. 2d 797 (E.D. Mo. 2012) (applying Missouri law); [Tarp v. County of San Diego](#), 110 Cal. App. 4th 267, 1 Cal. Rptr. 3d 607 (4th Dist. 2003); [Estate of Davis v. O’Neill](#), 42 So. 3d 520 (Miss. 2010); [Radford v. Keith](#), 160 N.C. App. 41, 584 S.E.2d 815 (2003), *aff’d*, 358 N.C. 136, 591 S.E.2d 519 (2004); [Kendrick v. Barker](#), 2001 WY 2, 15 P.3d 734 (Wyo. 2001).

- ³ Parra de Rey v. Rey, 114 So. 3d 371 (Fla. 3d DCA 2013); Cox & Floyd Grading, Inc. v. Kajima Const. Services, Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003).
- ⁴ Chase Manhattan Mortg. Corp. v. Machado, 83 Conn. App. 183, 850 A.2d 260 (2004).
- ⁵ In re Estate of Hollett, 150 N.H. 39, 834 A.2d 348 (2003).
- ⁶ Restatement Second, Contracts § 174.
- ⁷ Restatement Second, Contracts § 175(1).
- ⁸ Gunter v. Farmers Ins. Co., Inc., 736 F.3d 768 (8th Cir. 2013); Rumsfeld v. Freedom NY, Inc., 329 F.3d 1320, 9 A.L.R. Fed. 2d 863 (Fed. Cir. 2003), adhered to on denial of reh'g en banc, 346 F.3d 1359 (Fed. Cir. 2003); Hill v. Wackenhut Services Intern., 865 F. Supp. 2d 84 (D.D.C. 2012) (applying Florida law); In re Toscano, 799 F. Supp. 2d 230 (E.D. N.Y. 2011) (applying New York law); Starr Intern. Co., Inc. v. U.S., 106 Fed. Cl. 50 (2012) (applying Delaware law); Mobility Systems and Equipment Company v. U.S., 51 Fed. Cl. 233 (2001); Rosales v. Icicle Seafoods, Inc., 316 P.3d 580 (Alaska 2013), petition for cert. filed (U.S. Dec. 24, 2013); Newsom v. Rabo Agrifinance, Inc., 2013 Ark. App. 259, 80 U.C.C. Rep. Serv. 2d 628 (2013); Woodruff v. TRG-Harbour House, Ltd., 967 So. 2d 248 (Fla. 3d DCA 2007); Primary Health Network, Inc. v. State, Dept. of Admin., 137 Idaho 663, 52 P.3d 307 (2002); Patton v. Wood Cty. Humane Soc., 154 Ohio App. 3d 670, 2003-Ohio-5200, 798 N.E.2d 676 (6th Dist. Wood County 2003).
As to the existence of an alternative, generally, see § 24.
As to coercive acts or threats, generally, see §§ 5 to 12.
- ⁹ In re American Intern. Group, Inc., Consol. Derivative Litigation, 976 A.2d 872 (Del. Ch. 2009), judgment aff'd, 11 A.3d 228 (Del. 2010).
- ¹⁰ R.F. Daddario & Sons, Inc. v. Shelansky, 123 Conn. App. 725, 3 A.3d 957 (2010); Kosmicki v. State, 264 Neb. 887, 652 N.W.2d 883 (2002).
- ¹¹ LeBlanc v. Lange, 365 S.W.3d 70 (Tex. App. Houston 1st Dist. 2011).
- ¹² U.C.C. § 1-103(b) (2001 revision), discussed generally in Am. Jur. 2d, Commercial Code § 14.
- ¹³ Romero v. Bank of the Southwest, 135 N.M. 1, 2003-NMCA-124, 83 P.3d 288 (Ct. App. 2003).
- ¹⁴ In re American Intern. Group, Inc., Consol. Derivative Litigation, 976 A.2d 872 (Del. Ch. 2009), judgment aff'd, 11 A.3d 228 (Del. 2010).

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I. Duress

A. In General

§ 2. Distinctions; fraud, undue influence, and extortion

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West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1)

Duress has been described as a type of fraud, in which compulsion in some form takes the place of deception in accomplishing an injury.¹ The distinction between duress and fraud is that the injury is accomplished in fraud without the knowledge of the victim while in duress, the victim is fully conscious of the illegal element.² Unlike fraud, coercion does not require an act of deceit.³

Obtaining money by duress of the person has been spoken of as extortion in some cases, and extortion has been described as “an extreme form of coercion and duress.”⁴ “Extortion” generally is defined as the use of threats to obtain leverage in a situation in which the victim of the threat has no feasible legal remedy.⁵

Duress has been described as an extreme form of undue influence,⁶ but undue influence has also been described as one of the ways in which duress can be accomplished, along with a threat or physical compulsion.⁷

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Footnotes

¹ [Frame v. Booth, Wade & Campbell](#), 238 Ga. App. 428, 519 S.E.2d 237 (1999); [Manufacturers American Bank v. Stamatis](#), 719 S.W.2d 64 (Mo. Ct. App. S.D. 1986); [Candid Productions, Inc. v. SFM Media Service Corp.](#), 51 A.D.2d 943, 381 N.Y.S.2d 280 (1st Dep’t 1976); [Solomon v. FloWarr Management, Inc.](#), 777 S.W.2d 701 (Tenn. Ct. App. 1989); [Norfolk Div. of Social Services v. Unknown Father](#), 2 Va. App. 420, 345 S.E.2d 533 (1986).

² [Candid Productions, Inc. v. SFM Media Service Corp.](#), 51 A.D.2d 943, 381 N.Y.S.2d 280 (1st Dep’t 1976).

³ [In re Marriage of Traster](#), 48 Kan. App. 2d 356, 291 P.3d 494 (2012), review granted, (Oct. 1, 2013).

⁴ [Gordon v. Gordon](#), 625 So. 2d 59 (Fla. 4th DCA 1993).

⁵ Am. Jur. 2d, Extortion, Blackmail, and Threats § 1.

⁶ In re Lofin's Estate, 285 N.C. 717, 208 S.E.2d 670 (1974).
As to undue influence, generally, see §§ 36 to 48.

⁷ In re Gibson-Terry and Terry, 325 Ill. App. 3d 317, 259 Ill. Dec. 336, 758 N.E.2d 459 (1st Dist. 2001); Silver v. Starrett, 176 Misc. 2d 511, 674 N.Y.S.2d 915 (Sup 1998).

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25 Am. Jur. 2d Duress and Undue Influence § 3

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A. In General

§ 3. Classifications and forms of duress, generally

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West's Key Number Digest, [Contracts](#)  95(1), 95(2)

West's Key Number Digest, [Payment](#)  87(1), 87(4), 87(5)

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[Refusal to pay debt as economic duress or business compulsion avoiding compromise or release, 9 A.L.R.4th 942](#)

Originally, the only form of duress recognized by the courts was that of the person, and this was divided into two classes:

- (1) duress of imprisonment, involving an actual loss of liberty; and
- (2) duress by means of threats, involving hardship that is only threatened.¹

Some jurisdictions still limit the defense of duress to cases in which there is an actual or threatened violence or restraint of a person's body, contrary to law, to compel him or her to enter into a contract or discharge one.² However, other jurisdictions now recognize duress of goods or property³ and economic duress.⁴

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¹ City of Portland v. Gemini Concerts, Inc., 481 A.2d 180 (Me. 1984); Ohio Cas. Ins. Co. v. Todd, 1991 OK 54, 813 P.2d 508 (Okla. 1991); Machinery Hauling, Inc. v. Steel of West Virginia, 181 W. Va. 694, 384 S.E.2d 139 (1989). As to duress by threat, generally, see §§ 11, 12.

² In re Paternity of K.R.H., 784 N.E.2d 985 (Ind. Ct. App. 2003).

§ 3. Classifications and forms of duress, generally, 25 Am. Jur. 2d Duress and Undue...

³ § 9.

⁴ §§ 19 to 23.

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25 Am. Jur. 2d Duress and Undue Influence § 4

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A. In General

§ 4. Imposition by third person

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West's Key Number Digest, [Contracts](#)  95(1)

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To be available as a defense in an action on a contract, duress must have been exercised by the one who claims the benefit of the contract or someone acting in his or her behalf or with his or her knowledge.¹ Thus, at least with respect to duress by means of threats, a contract will not be invalidated if the duress emanates from a third person who has no involvement with the opposite party to the contract.² Also, the validity of a contract is not affected by the fact that its execution was induced by duress practiced by a third party if the duress was not committed with the knowledge or consent of the obligee.³ However, if the obligee has knowledge of, consents to, or participates in the duress by a third person, the contract may be avoided as against the obligee or one claiming under the obligee with knowledge.⁴

There is an exception to the general rule that duress must be exercised by the obligee of the contract: if duress by physical compulsion has caused a contract to be void from the outset, as distinguished from voidable, it is immaterial whether the duress is exercised by a party to the transaction or by a third party.⁵

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¹ [Rumsfeld v. Freedom NY, Inc.](#), 329 F.3d 1320, 9 A.L.R. Fed. 2d 863 (Fed. Cir. 2003), adhered to on denial of reh'g en banc, 346 F.3d 1359 (Fed. Cir. 2003); [Bistany v. PNC Bank, NA](#), 585 F. Supp. 2d 179 (D. Mass. 2008) (applying Massachusetts law; duress must not emanate from one's own attorney); [Vitakis-Valchine v. Valchine](#), 793 So. 2d 1094 (Fla. 4th DCA 2001); [Glenney v. Crane](#), 352 S.W.2d 773 (Tex. Civ. App. Houston 1961), writ refused n.r.e., (May 16, 1972).

² [Kozera v. Westchester Fairfield Chapter of Nat. Elec. Contractors Ass'n, Inc., Local 501](#), 714 F. Supp. 644 (S.D. N.Y. 1989), judgment rev'd in part, vacated in part on other grounds, 909 F.2d 48 (2d Cir. 1990); [Kalyanaram v. Burck](#), 225 S.W.3d 291, 221 Ed. Law Rep. 946 (Tex. App. El Paso 2006).

§ 4. Imposition by third person, 25 Am. Jur. 2d Duress and Undue Influence § 4

³ In re Marriage of Varco, 158 Ill. App. 3d 578, 110 Ill. Dec. 559, 511 N.E.2d 736 (1st Dist. 1987).

⁴ In re Marriage of Hitchcock, 265 N.W.2d 599 (Iowa 1978); Meredith v. Talbot County, 80 Md. App. 174, 560 A.2d 599 (1989).

⁵ U.S. for Use of Trane Co. v. Bond, 322 Md. 170, 586 A.2d 734 (1991).
As to the effect of duress on a contract, generally, see §§ 26 to 31.

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I. Duress

B. Coercion; Wrongful Act or Threat

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25 Am. Jur. 2d Duress and Undue Influence § 5

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I. Duress

B. Coercion; Wrongful Act or Threat

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§ 5. Generally

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West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3)

West's Key Number Digest, [Payment](#)  87(2)

Duress requires a showing that one party was prevented from exercising his or her free will by the other party's threats,¹ wrongful conduct,² coercive acts,³ or wrongful and oppressive conduct.⁴ The wrongful conduct may take virtually any form.⁵

To constitute coercion or duress sufficient to make a payment involuntary, there must be some actual or threatened exercise of power possessed, or believed to be possessed, by the party exacting or receiving the payment over the person or property of another for which the latter has no means of immediate relief other than making the payment.⁶ Coercion comes into play when improper pressure by one party to a contract deprives another party of the exercise of his or her free will and causes him or her to act to his or her detriment.⁷

Duress requires a compulsion affecting the mind, which shows that the execution of the contract or other instrument is not the voluntary act of the maker.⁸ The compulsion must be present and operate at the time the instrument is executed.⁹

It has been held that, in the context of a claim for duress, the act threatened is wrongful if it is made with the corrupt intent to coerce a transaction that is grossly unfair to the victim and not related to the subject of the proceedings.¹⁰ However, it has also been held that a party's actions, rather than motive, determine whether that party has exerted wrongful and coercive pressure.¹¹

An action that is taken voluntarily cannot be ascribed to duress.¹²

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Footnotes

- ¹ Boud v. SDNCO, Inc., 2002 UT 83, 54 P.3d 1131, 48 U.C.C. Rep. Serv. 2d 532 (Utah 2002).
- ² Clark v. Riverview Fire Protection Dist., 354 F.3d 752 (8th Cir. 2004) (applying Missouri law); Cooperative Resource Center, Inc. v. Southeast Rural Community Assistance Project, Inc., 256 Ga. App. 719, 569 S.E.2d 545 (2002); Putnam v. Time Warner Cable of Southeastern Wisconsin, Ltd. Partnership, 2002 WI 108, 255 Wis. 2d 447, 649 N.W.2d 626 (2002).
- ³ Abdulla v. Klosinski, 898 F. Supp. 2d 1348 (S.D. Ga. 2012), appeal dismissed, (11th Cir. 12-15448) (Dec. 27, 2012) and aff'd, 523 Fed. Appx. 580 (11th Cir. 2013) (applying Georgia law); Krossa v. All Alaskan Seafoods, Inc., 37 P.3d 411 (Alaska 2001); Brilla v. Mulhearn, 168 Ohio App. 3d 223, 2006-Ohio-3816, 859 N.E.2d 578 (9th Dist. Summit County 2006).
- ⁴ Primary Health Network, Inc. v. State, Dept. of Admin., 137 Idaho 663, 52 P.3d 307 (2002).
- ⁵ Noble v. White, 66 Conn. App. 54, 783 A.2d 1145 (2001).
- ⁶ Soneet R. Kapila, P.A. v. Giuseppe America, Inc., 817 So. 2d 866 (Fla. 4th DCA 2002); Norton v. City of Chicago, 293 Ill. App. 3d 620, 228 Ill. Dec. 810, 690 N.E.2d 119 (1st Dist. 1997).
- ⁷ In re Marriage of Traster, 48 Kan. App. 2d 356, 291 P.3d 494 (2012), review granted, (Oct. 1, 2013).
- ⁸ Willms Trucking Co., Inc. v. JW Const. Co. Inc., 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994).
- ⁹ Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); Willms Trucking Co., Inc. v. JW Const. Co. Inc., 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994).
- ¹⁰ Radford v. Keith, 160 N.C. App. 41, 584 S.E.2d 815 (2003), aff'd, 358 N.C. 136, 591 S.E.2d 519 (2004).
- ¹¹ Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).
- ¹² Imperial Refineries Corp. v. Morrissey, 254 Iowa 934, 119 N.W.2d 872 (1963).

25 Am. Jur. 2d Duress and Undue Influence § 6

American Jurisprudence, Second Edition | May 2021 Update

Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

1. In General

§ 6. Acts that are not criminal or tortious

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(2)

It has been held that an act may be wrongful for the purposes of the defense of duress even if it is not criminal or tortious or in violation of a contractual duty.¹ Under this rule, a coercive act will support a duress claim if it is wrongful in a moral sense.² However, it has also been held that a claim of duress cannot be based upon a party's threat to take an action that is within that party's legal right to take³ and that it is not duress to do that which a party has a legal right to do.⁴

CUMULATIVE SUPPLEMENT

Cases:

Holder of promissory note and deed of trust did not act without legal justification when acquiring note and deed of trust and accelerating note after landowner's late payment, for purposes of landowner's duress claim, even if purpose of acquiring the documents was to gain "leverage" against landowner regarding easement dispute, where note and deed of trust were assignable, holder's purchase of them was legal, and the documents were enforceable even without being recorded. [Schuhardt Consulting Profit Sharing Plan v. Double Knobs Mountain Ranch, Inc.](#), 468 S.W.3d 557 (Tex. App. San Antonio 2014), review denied, (Oct. 23, 2015).

[END OF SUPPLEMENT]

Footnotes

- ¹ Hurd v. Wildman, Harrold, Allen and Dixon, 303 Ill. App. 3d 84, 236 Ill. Dec. 482, 707 N.E.2d 609 (1st Dist. 1999); Wolf v. Marlton Corp., 57 N.J. Super. 278, 154 A.2d 625 (App. Div. 1959).
- ² Krossa v. All Alaskan Seafoods, Inc., 37 P.3d 411 (Alaska 2001); Hurd v. Wildman, Harrold, Allen and Dixon, 303 Ill. App. 3d 84, 236 Ill. Dec. 482, 707 N.E.2d 609 (1st Dist. 1999).
- ³ § 14.
- ⁴ Gott v. First Midwest Bank of Dexter, 963 S.W.2d 432 (Mo. Ct. App. S.D. 1998).

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25 Am. Jur. 2d Duress and Undue Influence § 7

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

1. In General

§ 7. Effect on victim; subjective or objective standard

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1), 95(2), 95(3)

West's Key Number Digest, [Payment](#)  87(1)

It has been held that, to constitute duress, an act must be sufficient to overcome the mind and will of a person of ordinary firmness.¹ Under this view, duress must be viewed in terms of a plaintiff's reasonable response so that the defense does not turn only upon the subjective state of mind of the claimant but it must also be reasonable in light of the objective facts presented.² However, it has also been held that the pressure applied does not have to be such as to overcome the will of a brave or courageous person, or even that of a person of ordinary firmness, but is sufficient if it in fact overcomes the will of the person against whom it is applied.³ Under this view, the test for the existence of duress is a subjective one, under which any wrongful act or threat that actually compels the victim to act against his or her will constitutes duress.⁴

Under the subjective test, whether an unlawful act constitutes duress must be determined in the light of the surrounding circumstances and varies with the gender, age, and mental characteristics of the person influenced.⁵ Thus, what constitutes duress depends upon the facts of the particular case.⁶ Factors relevant in determining whether a victim's will was actually overcome, supporting a finding of duress, are as follows: the age, physical and mental condition of the victim, whether the victim had independent advice, whether the transaction was fair, whether there was independent consideration for the transaction, the relationship of the victim and the alleged perpetrator, the value of the item transferred compared with the total wealth of the victim, whether the perpetrator actively sought the transfer, and whether the victim was in distress or an emergency situation.⁷

The real and ultimate fact to be determined in a duress action under the subjective test is whether the particular party affected actually had a choice in exercising his or her will;⁸ an act or threat that would not create duress with respect to an ordinary, strong, vigorous individual might do so with respect to a person of less strength and vigor.⁹

CUMULATIVE SUPPLEMENT

Cases:

Under New York law, to prove duress in entering into a contract, a plaintiff must demonstrate that the difficult situation or decision she confronted was a product of the defendant's actions; a duress defense is evaluated according to an objective standard. [Tucker v. Wyckoff Heights Medical Center](#), 52 F. Supp. 3d 583 (S.D. N.Y. 2014).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Quilloin v. Tenet HealthSystem Philadelphia, Inc.](#), 763 F. Supp. 2d 707 (E.D. Pa. 2011), rev'd on other grounds, 673 F.3d 221 (3d Cir. 2012) (applying Pennsylvania law); [Siddle v. Crants](#), 650 F. Supp. 2d 773 (M.D. Tenn. 2009) (applying Tennessee law);
[Soneet R. Kapila, P.A. v. Giuseppe America, Inc.](#), 817 So. 2d 866 (Fla. 4th DCA 2002); [Hiers v. Estate of Hiers](#), 278 Ga. App. 242, 628 S.E.2d 653 (2006); [Wilson v. Wilson](#), 642 S.W.2d 132 (Mo. Ct. App. W.D. 1982); [Bennett v. Bennett](#), 433 A.2d 968 (R.I. 1981); [Norfolk Div. of Social Services v. Unknown Father](#), 2 Va. App. 420, 345 S.E.2d 533 (1986).
- ² [Monterrey Center, LLC v. Education Partners, Inc.](#), 5 So. 3d 225 (La. Ct. App. 1st Cir. 2008); [Berardi v. Meadowbrook Mall Co.](#), 212 W. Va. 377, 572 S.E.2d 900 (2002).
- ³ [Helstrom v. North Slope Borough](#), 797 P.2d 1192 (Alaska 1990); [Pelfrey v. Pelfrey](#), 25 Va. App. 239, 487 S.E.2d 281 (1997).
- ⁴ [Allen v. Planning Bd. of Evesham Tp.](#), 137 N.J. Super. 359, 349 A.2d 99 (App. Div. 1975); [Jones v. Jones](#), 276 Or. 1125, 557 P.2d 239 (1976); [Avco Financial Services, Inc. v. Johnson](#), 596 P.2d 658 (Utah 1979).
- ⁵ [In re Estate of Arbeitman](#), 886 S.W.2d 644 (Mo. Ct. App. E.D. 1994); [Ivey v. McAlexander](#), 1993 WL 330996 (Tenn. Ct. App. 1993).
- ⁶ [Fleischman v. Fleischman](#), 285 A.2d 689 (D.C. 1972); [Matthews v. Matthews](#), 725 S.W.2d 275 (Tex. App. Houston 1st Dist. 1986), writ refused n.r.e., (July 8, 1987).
- ⁷ [Yurek v. Shaffer](#), 198 N.C. App. 67, 678 S.E.2d 738 (2009).
- ⁸ [Putz v. Allie](#), 785 N.E.2d 577 (Ind. Ct. App. 2003); [Gott v. First Midwest Bank of Dexter](#), 963 S.W.2d 432 (Mo. Ct. App. S.D. 1998).
Duress is viewed with a subjective test which looks at the individual characteristics of the person allegedly influenced, and duress does not occur if the victim has a reasonable alternative to succumbing and fails to take advantage of it. [Holler v. Holler](#), 364 S.C. 256, 612 S.E.2d 469 (Ct. App. 2005).
- ⁹ [Windham v. Alexander, Weston & Poehner, P.C.](#), 887 S.W.2d 182 (Tex. App. Texarkana 1994), writ denied, (Apr. 20, 1995).

25 Am. Jur. 2d Duress and Undue Influence § 8

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

1. In General

§ 8. Imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(4)

Duress by imprisonment can prevent the enforcement of a release.¹ Also, fear of actual imprisonment, coupled with a threat of imminent physical violence for refusal to sign a document, constitutes duress.² However, a fear of imprisonment without a showing of duress is not sufficient to void a contract.³

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Footnotes

¹ [Boyd v. Adams](#), 513 F.2d 83 (7th Cir. 1975) (rejected on other grounds by, [Stamps v. City of Taylor](#), 218 Mich. App. 626, 554 N.W.2d 603 (1996)); [Ross v. Wal-Mart Stores, Inc.](#), 730 F. Supp. 357 (D. Kan. 1990); [State ex rel. Kabel v. Sewerage and Water Bd. of New Orleans](#), 138 So. 2d 856 (La. Ct. App. 4th Cir. 1962).

² [U.S. for Use of Trane Co. v. Bond](#), 322 Md. 170, 586 A.2d 734 (1991).

³ [Fant v. Duffy](#), 232 Md. 481, 194 A.2d 293 (1963).

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25 Am. Jur. 2d Duress and Undue Influence § 9

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

1. In General

§ 9. Duress of goods or property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(2)

West's Key Number Digest, [Payment](#)  87(5)

A.L.R. Library

[Economic duress or business compulsion in execution of contract for sale of real property, 12 A.L.R.4th 1262](#)

[Refusal to pay debt as economic duress or business compulsion avoiding compromise or release, 9 A.L.R.4th 942](#)

Duress of goods or property exists if one party has possession or control of the property of another and refuses to surrender it to the owner except upon compliance with an unlawful demand.¹ Thus, the refusal by one holding property to deliver it to the one rightfully entitled to it, except upon condition of the latter signing a release, is duress.² Duress of property or goods may also be proved if the party holding them, even though due something, exacts payment for their release; in such a case, the excess may be recovered.³ For example, a requirement of an overpayment by a mortgagee to secure the release of a mortgage may constitute duress.⁴

One who falsely clouds the title to real property and then seeks some consideration to remove the cloud has been held guilty of a wrongful act and may be compelled to restore the consideration.⁵

Practice Tip:

To determine whether duress motivated the payment of a demanded sum, a court must consider the nature of the asset involved

and the consequences of nonpayment.⁶

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Footnotes

- ¹ [Jacobs v. Atlantco Ltd. Partnership No. 1](#), 36 Md. App. 335, 373 A.2d 1255 (1977).
- ² [Wheelock Bros. v. Bankers Warehouse Co.](#), 115 Colo. 197, 171 P.2d 405, 168 A.L.R. 939 (1946).
- ³ [First Nat. Bank of Cincinnati v. Pepper](#), 547 F.2d 708 (2d Cir. 1976).
- ⁴ [Steffen v. Refrigeration Discount Corp.](#), 91 Cal. App. 2d 494, 205 P.2d 727 (2d Dist. 1949).
- ⁵ [Leeper v. Beltrami](#), 53 Cal. 2d 195, 1 Cal. Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803 (1959).
- ⁶ [Wermers Floorcovering, Inc. v. Santanna Natural Gas Corp.](#), 342 Ill. App. 3d 222, 276 Ill. Dec. 762, 794 N.E.2d 1012 (2d Dist. 2003).

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25 Am. Jur. 2d Duress and Undue Influence § 10

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat


1. In General

§ 10. Other conduct and circumstances as coercion

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1), 87(2)

Particular circumstances that do not constitute duress include—

- one party's concession, in negotiating a contract, to a reasonable demand of the other party.¹
- one party's fear of financial embarrassment.²
- one party's dire financial straits³ or other circumstances that are not the fault of the other party.⁴
- unfairness in the negotiations preceding an agreement or unequal bargaining power of the parties.⁵
- hard bargaining, financial pressure,⁶ or tough negotiating.⁷
- one party's insistence on a contractual provision or payment that he or she honestly and reasonably believes he or she is entitled to receive.⁸

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Footnotes

¹ U.S. v. Bethlehem Steel Corp., 315 U.S. 289, 62 S. Ct. 581, 86 L. Ed. 855 (1942).

² Robinson Contracting Co., Inc. v. U.S., 16 Cl. Ct. 676, 1989 WL 39526 (1989), decision aff'd, 895 F.2d 1420 (Fed. Cir. 1990); Andres v. City of Perrysburg, 47 Ohio App. 3d 51, 546 N.E.2d 1377 (6th Dist. Wood County 1988); Matthews v. Wenatchee Heights Water Co., 92 Wash. App. 541, 963 P.2d 958 (Div. 3 1998).

³ Rochester Ford Sales, Inc. v. Ford Motor Co., 287 F.3d 32 (1st Cir. 2002).

⁴ Resolution Trust Corp. v. Ruggiero, 977 F.2d 309 (7th Cir. 1992); Lomas & Nettleton Co. v. Tiger Enterprises, Inc., 99 Idaho 539, 585 P.2d 949 (1978); Wallenius v. Sison, 243 Ill. App. 3d 495, 183 Ill. Dec. 448, 611 N.E.2d 1096 (1st Dist. 1993); Grant Renne & Sons, Inc. v. J. E. Dunn Const. Co., 633 S.W.2d 166 (Mo. Ct. App. W.D. 1982); In re Yannalfo, 147 N.H. 597, 794 A.2d 795 (2002); Patton v. Wood Cty. Humane Soc., 154 Ohio App. 3d 670,

2003-Ohio-5200, 798 N.E.2d 676 (6th Dist. Wood County 2003).

⁵ Hampton Island, LLC v. HAOP, LLC, 306 Ga. App. 542, 702 S.E.2d 770 (2010).

⁶ Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co., 769 F. Supp. 671 (D. Del. 1991), judgment aff'd, 988 F.2d 414 (3d Cir. 1993); Abdulla v. Klosinski, 898 F. Supp. 2d 1348 (S.D. Ga. 2012), appeal dismissed, (11th Cir. 12-15448) (Dec. 27, 2012) and aff'd, 523 Fed. Appx. 580 (11th Cir. 2013) (applying Georgia law); General Elec. Business Financial Services, Inc. v. Silverman, 693 F. Supp. 2d 796 (N.D. Ill. 2010) (applying Illinois law); In re National Century Financial Enterprises, Inc., Investment Litigation, 905 F. Supp. 2d 814 (S.D. Ohio 2012), opinion aff'd, 535 Fed. Appx. 522 (6th Cir. 2013) (applying New York law); Hampton Island, LLC v. HAOP, LLC, 306 Ga. App. 542, 702 S.E.2d 770 (2010); Krilich v. American Nat. Bank and Trust Co. of Chicago, 334 Ill. App. 3d 563, 268 Ill. Dec. 531, 778 N.E.2d 1153 (2d Dist. 2002).

As to economic duress, generally, see § 19.

⁷ Texas Commerce Bank, N.A. v. United Sav. Ass'n of Texas, 789 F. Supp. 848 (S.D. Tex. 1992).

⁸ Noble v. White, 66 Conn. App. 54, 783 A.2d 1145 (2001).

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25 Am. Jur. 2d Duress and Undue Influence § 11

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

2. Threats

a. In General

§ 11. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3), 95(4), 95(5)

West's Key Number Digest, [Payment](#)  87(2), 87(3)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 12](#) (Instruction to jury—Threats as constituting duress—"Person of ordinary firmness" test)

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 13](#) (Instruction to jury—Threats as constituting duress—"Resistance of person acted upon" test)

Duress by threats may be expressed in words or inferred from words or other conduct.¹ Compulsion or coercion by threats is sometimes called "duress per minas."² However, duress per minas, as defined at common law, existed only if the party entered into a contract or performed an act for fear of imprisonment, mayhem, or loss of life or limb.³

Some courts measure the sufficiency of a threat upon which a claim of duress is based by examining whether the threat overbears the exercise of free will⁴ or leaves the victim bereft of the quality of mind essential to the making of a contract.⁵ However, a comment to the Restatement argues that a test using the term "free will" as applied to the victim is not appropriate because of the vagueness and impracticability of that term⁶ and instead uses the criterion that the threat is such to cause the victim to take the action demanded for lack of a reasonable alternative.⁷ Some courts also use a criterion similar to the Restatement,⁸ and some require both an absence of a reasonable alternative and the destruction of the victim's free agency by threat.⁹

To constitute duress, a threat must have been actually made, and the person alleged to have been influenced must have believed it would be carried out.¹⁰ A person claiming duress by threat must show that, at the time, there was an apparent intention and ability to execute the threat.¹¹ A threat, even if improper, does not amount to duress if the victim has a reasonable alternative to succumbing and fails to take advantage of it.¹²

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Footnotes

- ¹ Restatement Second, Contracts § 175, comment a.
- ² *Machinery Hauling, Inc. v. Steel of West Virginia*, 181 W. Va. 694, 384 S.E.2d 139 (1989).
- ³ *Machinery Hauling, Inc. v. Steel of West Virginia*, 181 W. Va. 694, 384 S.E.2d 139 (1989).
- ⁴ *Meredith v. Talbot County*, 80 Md. App. 174, 560 A.2d 599 (1989); *Cruse v. Hahn*, 754 So. 2d 471 (Miss. Ct. App. 1999); *Machinery Hauling, Inc. v. Steel of West Virginia*, 181 W. Va. 694, 384 S.E.2d 139 (1989).
- ⁵ *Rissman v. Rissman*, 213 F.3d 381 (7th Cir. 2000) (applying Illinois law); *Clark v. Riverview Fire Protection Dist.*, 354 F.3d 752 (8th Cir. 2004) (applying Missouri law); *In re Marriage of Thomas*, 199 S.W.3d 847 (Mo. Ct. App. S.D. 2006).
- ⁶ Restatement Second, Contracts § 175, comment b.
- ⁷ Restatement Second, Contracts § 175(1).
- ⁸ *Centech Group, Inc. v. Getronicswang Co., LLC*, 32 Fed. Appx. 673 (4th Cir. 2002) (applying Virginia law); *Cox v. McLaughlin*, 315 Ark. 338, 867 S.W.2d 460 (1993); *Beneficial Mtge. Co. of Ohio v. Leach*, 96 Ohio St. 3d 1513, 2002-Ohio-4950, 775 N.E.2d 856 (2002); *Machinery Hauling, Inc. v. Steel of West Virginia*, 181 W. Va. 694, 384 S.E.2d 139 (1989).
- ⁹ *Brock v. Entre Computer Centers, Inc.*, 933 F.2d 1253 (4th Cir. 1991); *Palmer Barge Line, Inc. v. Southern Petroleum Trading Co., Ltd.*, 776 F.2d 502 (5th Cir. 1985).
- ¹⁰ *Wolf v. Marlton Corp.*, 57 N.J. Super. 278, 154 A.2d 625 (App. Div. 1959).
- ¹¹ *Gouldstone v. Life Investors Ins. Co. of America*, 236 Ga. App. 813, 514 S.E.2d 54 (1999).
- ¹² *In re American Intern. Group, Inc., Consol. Derivative Litigation*, 976 A.2d 872 (Del. Ch. 2009), judgment aff'd, 11 A.3d 228 (Del. 2010).

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25 Am. Jur. 2d Duress and Undue Influence § 12

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat


2. Threats

a. In General

§ 12. What constitutes a wrongful or improper threat, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3) to 95(5)

West's Key Number Digest, [Payment](#)  87(2), 87(3)

According to the Restatement¹ and some courts,² an improper threat is one that is so shocking that the court will not inquire into the fairness of the resulting exchange or a threat in which the impropriety consists of the threat in combination with the resulting unfairness.³

The Restatement provides that a threat is improper if what is threatened is:

- (1) a crime or a tort, or would be a crime or a tort if it resulted in obtaining property;
- (2) a criminal prosecution;
- (3) the use of civil process and the threat is made in bad faith; or
- (4) a breach of the duty of good faith and fair dealing under a contract with the recipient,⁴ and this list has been adopted by some courts.⁵

Observation:

An ordinary offer to make a contract commonly involves an implied threat by one party, the offeror, not to make the contract unless his or her terms are accepted by the other party, the offeree. Such threats are an accepted part of the bargaining process and do not amount to duress unless they are so improper as to amount to an abuse of that process.⁶

§ 12. What constitutes a wrongful or improper threat, generally, 25 Am. Jur. 2d Duress...

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Footnotes

- ¹ Restatement Second, Contracts § 175, comment a.
- ² Centech Group, Inc. v. Getronicswang Co., LLC, 32 Fed. Appx. 673 (4th Cir. 2002) (applying Virginia law).
- ³ Vail/Arrowhead, Inc. v. District Court for the Fifth Judicial Dist., Eagle County, 954 P.2d 608 (Colo. 1998).
- ⁴ Restatement Second, Contracts § 176.
- ⁵ Richards v. Allianz Life Ins. Co. of North America, 133 N.M. 30, 59 P.3d 1262 (2002).
As to particular kinds of threats as duress, generally, see §§ 13 to 18.
- ⁶ Boud v. SDNCO, Inc., 2002 UT 83, 54 P.3d 1131, 48 U.C.C. Rep. Serv. 2d 532 (Utah 2002).

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25 Am. Jur. 2d Duress and Undue Influence § 13

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat


2. Threats

b. Particular Threats

§ 13. Arrest, imprisonment, prosecution, or investigation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3), 95(5)

West's Key Number Digest, [Payment](#)  87(3)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 14](#) (Instruction to jury—Threats of arrest or prosecution of disputed claim as duress)

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence §§ 29, 30](#) (Complaint, petition, or declaration—Allegation—Threat of criminal prosecution as duress)

The fear of imprisonment was expressly included in the common law definition of duress per minas,¹ and it has been held that threats of arrest or imprisonment constitute duress.² However, it has also been held that mere threats of criminal prosecution do not constitute duress if no warrant has been issued or proceedings commenced.³

A threat need not be of an unlawful arrest or prosecution to constitute duress; duress may be exercised through a threat of prosecution for an offense of which the party whose prosecution is threatened is actually guilty.⁴ The important question is not whether there was a ground for the threatened arrest or imprisonment or whether the party threatened was guilty or innocent but whether that party was deprived of the exercise of his or her free will by the threat.⁵

According to the Restatement, in determining whether a threat of prosecution can be deemed improper, so as to form the basis for a claim of duress, the guilt or innocence of the individual threatened with prosecution is not material, but if the person who would be subjected to prosecution is in fact guilty, that circumstance may facilitate demonstrating that assent was

actually brought about by the threat.⁶

There may be duress through threats of prosecution of a spouse or other relative,⁷ and a threat of investigation or to make a report to officials who might start an investigation of a person's activities may constitute duress if it deprives the person of free will.⁸

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Footnotes

¹ § 11.

² *Richards v. Allianz Life Ins. Co. of North America*, 133 N.M. 30, 59 P.3d 1262 (2002); *Triad Distributors, Inc. v. Conde*, 56 A.D.2d 648, 391 N.Y.S.2d 897 (2d Dep't 1977).

³ *Hoover v. Mobley*, 198 Ga. 68, 31 S.E.2d 9 (1944); *Palatucci v. Woodland*, 166 Pa. Super. 315, 70 A.2d 674 (1950).

⁴ *Coleman v. Crescent Insulated Wire & Cable Co.*, 350 Mo. 781, 168 S.W.2d 1060 (1943); *Pierce v. Haverlah's Estate*, 428 S.W.2d 422 (Tex. Civ. App. Tyler 1968), writ refused n.r.e., (Oct. 2, 1968).

⁵ *Motor Equipment Co. v. McLaughlin*, 156 Kan. 258, 133 P.2d 149 (1943); *Orkin Exterminating Co. v. Gulf Coast Rice Mills*, 362 S.W.2d 159 (Tex. Civ. App. Houston 1962), writ refused n.r.e., (Mar. 6, 1963).

⁶ Restatement Second, Contracts § 176, comment c.

⁷ *Frye v. Sovine*, 58 N.C. App. 731, 294 S.E.2d 748 (1982).

⁸ *Balling v. Finch*, 203 Cal. App. 2d 413, 21 Cal. Rptr. 490 (2d Dist. 1962).

25 Am. Jur. 2d Duress and Undue Influence § 14

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

2. Threats

b. Particular Threats

§ 14. Threat to execute or enforce legal rights or take legal measures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(4)

West's Key Number Digest, [Payment](#)  87(3)

It is not duress to threaten to do something that one has a legal right to do,¹ nor is it duress to threaten to take any measure authorized by law and the circumstances of the case.² Unless there is an actual or threatened abuse of process, a threat of civil litigation generally does not constitute duress.³ Thus, it is not duress to institute or threaten to institute civil suits,⁴ or take proceedings in court, or for any person to declare an intention to use the courts to insist on what he or she believes to be legal rights,⁵ at least if the threatened action is made in good faith—that is, in the honest belief that a good cause of action exists⁶ and does not involve an abuse of process.⁷ Similarly, an agreement to dismiss even a criminal action in exchange for execution of a legal document does not constitute “duress” if the criminal action was legally justifiable.⁸

However, if a transaction is induced by the use of threats to take lawful action, the presence or absence of duress depends upon the totality of the circumstances.⁹ Threatening another with a groundless action or with an action to enforce a just legal demand may constitute duress if the purpose is to oppress the adversary and cause him or her unnecessary hardship and if the effect is to overcome the free will of the victim.¹⁰ Also, a threat to take legal action with knowledge of the falsity of the claim amounts to duress.¹¹

According to the Restatement, a threat of civil action constitutes an improper threat only if it is made in bad faith notwithstanding that the claim on which the process is based eventually proves to be without foundation.¹²

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Footnotes

¹ [U.S. v. Twenty Miljam-350 IED Jammers](#), 669 F.3d 78 (2d Cir. 2011) (applying New York law); [Conagra Trade](#)

Group, Inc. v. Fuel Exploration, LLC, 636 F. Supp. 2d 1166 (D. Colo. 2009) (applying Colorado law); W.T. v. Department of Children and Families, 846 So. 2d 1278 (Fla. 5th DCA 2003); Suwannee Swifty Stores, Inc. v. NationsBank, N.A., 245 Ga. App. 198, 536 S.E.2d 299 (2000); Estate of Davis v. O'Neill, 42 So. 3d 520 (Miss. 2010); Kosmicki v. State, 264 Neb. 887, 652 N.W.2d 883 (2002); Gubitz v. Security Mut. Life Ins. Co. of New York, 262 A.D.2d 451, 692 N.Y.S.2d 139 (2d Dep't 1999); Medina Supply Co. v. Corrado, 116 Ohio App. 3d 847, 689 N.E.2d 600 (8th Dist. Cuyahoga County 1996); Comcast of Oregon II, Inc. v. City of Eugene, 211 Or. App. 573, 155 P.3d 99 (2007), *aff'd on other grounds*, 346 Or. 238, 209 P.3d 800 (2009); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001); Lee v. Daniels & Daniels, 264 S.W.3d 273 (Tex. App. San Antonio 2008).

² Kaplan v. Kaplan, 25 Ill. 2d 181, 182 N.E.2d 706 (1962); Thomas & Howard Co. v. Fowler, 225 S.C. 354, 82 S.E.2d 454 (1954).

³ Leeper v. Beltrami, 53 Cal. 2d 195, 1 Cal. Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803 (1959); Rizzi v. Fanelli, 63 A.2d 872 (Mun. Ct. App. D.C. 1949); Wise v. Midtown Motors, 231 Minn. 46, 42 N.W.2d 404, 20 A.L.R.2d 735 (1950).

⁴ Peralta v. Peralta Food, Corp., 506 F. Supp. 2d 1274 (S.D. Fla. 2007) (applying Florida law); Intelligent Digital Systems, LLC v. Visual Management Systems, Inc., 736 F. Supp. 2d 596 (E.D. N.Y. 2010) (applying New York law); *In re Villarreal*, 401 B.R. 823 (Bankr. S.D. Tex. 2009) (applying Texas law); Ballard v. City of Creve Coeur, 2013 WL 5458971 (Mo. Ct. App. E.D. 2013), *reh'g and/or transfer denied*, (Jan. 23, 2014); Continental Cas. Co. v. Huizar, 740 S.W.2d 429 (Tex. 1987).

⁵ Leeper v. Beltrami, 53 Cal. 2d 195, 1 Cal. Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803 (1959); Medical Recovery Services, LLC v. Carnes, 148 Idaho 868, 230 P.3d 760 (Ct. App. 2010); McGehee v. McGehee, 227 Miss. 170, 85 So. 2d 799 (1956); Kopp v. Fink, 1951 OK 157, 204 Okla. 570, 232 P.2d 161 (1951); Tri-State Roofing Co. of Uniontown v. Simon, 187 Pa. Super. 17, 142 A.2d 333 (1958); Stark v. Gigante, 14 Wis. 2d 13, 109 N.W.2d 525 (1961).

⁶ Peralta v. Peralta Food, Corp., 506 F. Supp. 2d 1274 (S.D. Fla. 2007) (applying Florida law); Wise v. Midtown Motors, 231 Minn. 46, 42 N.W.2d 404, 20 A.L.R.2d 735 (1950); Tri-State Roofing Co. of Uniontown v. Simon, 187 Pa. Super. 17, 142 A.2d 333 (1958).

⁷ Gallagher v. Lederer, 86 Ohio App. 181, 41 Ohio Op. 29, 90 N.E.2d 412 (1st Dist. Hamilton County 1949).

⁸ Nguyen v. Biondo, 508 Fed. Appx. 932 (11th Cir. 2013) (applying Florida law).

⁹ Radford v. Keith, 160 N.C. App. 41, 584 S.E.2d 815 (2003), *aff'd*, 358 N.C. 136, 591 S.E.2d 519 (2004).

¹⁰ Wise v. Midtown Motors, 231 Minn. 46, 42 N.W.2d 404, 20 A.L.R.2d 735 (1950).

¹¹ Leeper v. Beltrami, 53 Cal. 2d 195, 1 Cal. Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803 (1959).

¹² Restatement Second, Contracts § 176, comment d.

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

2. Threats

b. Particular Threats

§ 15. Threat to execute or enforce legal rights or take legal measures—Particular threats

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(4)

West's Key Number Digest, [Payment](#)  87(3)

Under the general rule that it is not duress to threaten to do what one has a legal right to do, the following threats been held not to constitute duress:

- to resort to legal proceedings to collect a claim that is valid, at least in part¹
- to resort to remedies given by a contract,² or to sue on a past-due note and to foreclose the lien securing such a note,³ or to foreclose⁴ or exercise the power of sale in a mortgage⁵
- to contest a divorce or annulment proceeding⁶

However, inducing a party to pay an invalid fee is an illegitimate end, for purposes of a duress analysis, if the threat is immediate.⁷

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Footnotes

¹ [Kopp v. Fink](#), 1951 OK 157, 204 Okla. 570, 232 P.2d 161 (1951); [Doernbecher v. Mutual Life Ins. Co. of New York](#), 16 Wash. 2d 64, 132 P.2d 751 (1943).

² [Morrill v. Amoskeag Sav. Bank](#), 90 N.H. 358, 9 A.2d 519 (1939).

³ [Ulmer v. Ulmer](#), 139 Tex. 326, 162 S.W.2d 944 (1942).

⁴ [Kopp v. Fink](#), 1951 OK 157, 204 Okla. 570, 232 P.2d 161 (1951); [Rader v. Barner](#), 172 Or. 1, 139 P.2d 130 (1943).

⁵ [Bond v. Crawford](#), 193 Va. 437, 69 S.E.2d 470 (1952).

⁶ Stark v. Gigante, 14 Wis. 2d 13, 109 N.W.2d 525 (1961).

⁷ Comcast of Oregon II, Inc. v. City of Eugene, 211 Or. App. 573, 155 P.3d 99 (2007), *aff'd* on other grounds, 346 Or. 238, 209 P.3d 800 (2009).

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

2. Threats

b. Particular Threats

§ 16. Threat to breach contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3)

West's Key Number Digest, [Payment](#)  87(2)

A.L.R. Library

[Refusal to pay debt as economic duress or business compulsion avoiding compromise or release, 9 A.L.R.4th 942](#)

Trial Strategy

[Promissory Note Executed Under Economic Duress or Business Compulsion, 11 Am. Jur. Proof of Facts 2d 23](#)

Ordinarily, a threat to breach a contract does not constitute duress.¹ However, because this rule is predicated on the ground that there is an adequate legal remedy for the breach, if there is no such remedy, the coercive effect of the threatened action may be inferred.² Thus, an inference of duress from a threatened breach may be created with evidence of irreparable harm for which the remedy afforded by the courts is inadequate.³

Footnotes

- ¹ Krilich v. American Nat. Bank and Trust Co. of Chicago, 334 Ill. App. 3d 563, 268 Ill. Dec. 531, 778 N.E.2d 1153 (2d Dist. 2002); Gubitz v. Security Mut. Life Ins. Co. of New York, 262 A.D.2d 451, 692 N.Y.S.2d 139 (2d Dep't 1999).
- ² Campbell v. Prater, 64 Wyo. 293, 191 P.2d 160 (1948).
- ³ Krilich v. American Nat. Bank and Trust Co. of Chicago, 334 Ill. App. 3d 563, 268 Ill. Dec. 531, 778 N.E.2d 1153 (2d Dist. 2002); 805 Third Ave. Co. v. M.W. Realty Associates, 58 N.Y.2d 447, 461 N.Y.S.2d 778, 448 N.E.2d 445 (1983).

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25 Am. Jur. 2d Duress and Undue Influence § 17

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

2. Threats

b. Particular Threats

§ 17. Threat to breach contract—Withholding payment of debt

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3)

West's Key Number Digest, [Payment](#)  87(2)

The mere withholding of payment of a debt alone does not constitute economic duress,¹ particularly if the party refusing has done nothing unlawful to cause the financial distress that compels the other party to accede to his or her terms.²

Because it is generally assumed in a case of a threat not to pay money owed that a reasonable alternative is available—that is, to institute a lawsuit—some courts require the obligee to bring suit against the threatening party even though coercion was used to procure the agreement.³ However, some courts have found duress if there is a showing of particular urgency or necessity for the payment,⁴ and it has been held that deliberately withholding payment of an acknowledged debt constitutes an action that is wrongful in the moral sense and therefore constitutes economic duress.⁵

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Footnotes

¹ [In re Frenz Enterprises, Inc.](#), 89 B.R. 220 (Bankr. M.D. Fla. 1988).

² [Rosellini v. Banchero](#), 8 Wash. App. 383, 506 P.2d 866 (Div. 1 1973), judgment rev'd on other grounds, 83 Wash. 2d 268, 517 P.2d 955 (1974).
As to the doctrine of economic duress, generally, see §§ 19 to 23.

³ [National American Corp. v. Federal Republic of Nigeria](#), 448 F. Supp. 622 (S.D. N.Y. 1978), judgment aff'd, 597 F.2d 314 (2d Cir. 1979).

⁴ [Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co.](#), 584 P.2d 15, 9 A.L.R.4th 928 (Alaska 1978) (also

noting that the debtor deliberately withheld payment of an acknowledged debt, knowing that the creditor was facing bankruptcy and had no choice but to accept an inadequate amount in settlement of the debt); [Rich & Whillock, Inc. v. Ashton Development, Inc.](#), 157 Cal. App. 3d 1154, 204 Cal. Rptr. 86 (4th Dist. 1984) (also noting that the defendants had never disputed the actual amount owed and knew the plaintiff was a new company, overextended to creditors and facing immediate bankruptcy if not paid, and the plaintiff strenuously objected to the defendants' tactics and succumbed to them only to prevent an economic disaster).

⁵ [Northern Fabrication Co., Inc. v. UNOCAL](#), 980 P.2d 958 (Alaska 1999).
As to economic duress, generally, see §§ 19 to 23.

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

2. Threats

b. Particular Threats

§ 18. Other threats

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(3)

West's Key Number Digest, [Payment](#)  87(2)

A threat of personal or family disgrace may be of such gravity as to deprive the person threatened of the mental capacity necessary to execute a valid contract.¹

Duress may consist of threats to business or property interests.²

A payment made to a public utility company that has no right to receive the payment is a payment made under duress if it is made to prevent loss to the payor's business or property.³

It has been held that a threat to unlawfully interfere with one's employment⁴ or to cause a loss of that employment⁵ may constitute duress. However, it has also been held that an employee is not placed under duress by a threat that he or she will be fired unless he or she signs a noncompete agreement.⁶

A threat to give false testimony as to matters that would bring humiliation and disgrace upon a person or his or her family may constitute duress if the threat overcomes the will of that person, removes his or her capacity to act for him- or herself, and causes him or her to do something he or she is not legally bound to do.⁷

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Footnotes

¹ [Tallmadge v. Robinson](#), 158 Ohio St. 333, 49 Ohio Op. 206, 109 N.E.2d 496 (1952).

- ² [CrossTalk Productions, Inc. v. Jacobson](#), 65 Cal. App. 4th 631, 76 Cal. Rptr. 2d 615 (2d Dist. 1998).
As to duress in the form of interference with business or occupation, generally, see § 19.
- ³ [Texas Power & Light Co. v. Doering Hotel Co.](#), 147 S.W.2d 897 (Tex. Civ. App. Austin 1941), judgment aff'd, 139 Tex. 351, 162 S.W.2d 938 (1942).
- ⁴ [Young v. Young](#), 188 Ga. 29, 2 S.E.2d 622 (1939).
- ⁵ [Wise v. Midtown Motors](#), 231 Minn. 46, 42 N.W.2d 404, 20 A.L.R.2d 735 (1950).
A trial court's finding that a defendant signed a promissory note under duress was not contrary to the preponderance of the evidence because the evidence indicated that the plaintiff, who was the defendant's superior, threatened the defendant with discharge from employment if he refused to sign the note. [Shurtleff v. Giller](#), 527 S.W.2d 214 (Tex. Civ. App. Waco 1975).
- ⁶ [Moores Pump and Supply, Inc. v. Laneaux](#), 727 So. 2d 695 (La. Ct. App. 3d Cir. 1999).
- ⁷ [Young v. Young](#), 8 Ohio App. 3d 52, 455 N.E.2d 1360 (10th Dist. Franklin County 1982).

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

3. Economic Duress or Business Compulsion

§ 19. Generally

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West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(2)

A.L.R. Library

[Economic duress or business compulsion in execution of contract for sale of real property, 12 A.L.R.4th 1262](#)

[Refusal to pay debt as economic duress or business compulsion avoiding compromise or release, 9 A.L.R.4th 942](#)

[Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040](#)

Trial Strategy

[Promissory Note Executed Under Economic Duress or Business Compulsion, 11 Am. Jur. Proof of Facts 2d 23](#)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 24 \(Complaint, petition, or](#)

declaration—Allegation—Money for retained goods paid under duress)

Some jurisdictions recognize business compulsion or economic duress.¹

In some jurisdictions, to constitute business compulsion or economic duress, there must be a wrongful act or threat, financial distress must be caused by the wrongful act or threat, and there must be no reasonable alternative to the terms presented by the wrongdoer.² In other jurisdictions, the doctrine applies only if one party has done a wrongful act which is sufficiently coercive to cause a reasonably prudent person, faced with no reasonable alternative, to agree to an unfavorable contract.³ In still others, “economic duress” is defined as the taking of undue or unjust advantage of a person’s economic necessity or distress to coerce him or her into making a contract,⁴ and in others, economic duress occurs if: (1) a party involuntarily accepts the terms of another; (2) the circumstances permit no other alternative; and (3) those circumstances are the result of the coercive acts of the other party.⁵ One may not void a contract on the grounds of economic duress merely because he or she entered into it with reluctance, because the contract was very disadvantageous to him or her, because the bargaining power of the parties was unequal, or because there was some unfairness in the negotiations that preceded the agreement.⁶ Moreover, a mere threat that does not force the other party to accede to some further demand does not constitute economic duress.⁷

Among the factors and circumstances to be taken into consideration in determining the existence of economic duress are the age and mental ability of the person seeking to avoid the transaction, his or her financial condition, the absence of good faith and reasonable belief by the party making the demand that there was a good defense or cause of action, the adequacy of the consideration passing between the parties, and the adequacy of the legal remedy.⁸

A claim of economic duress requires a showing that the contract at issue was made under circumstances evincing a lack of free will on the part of the contracting parties; it is not sufficient to show that consent was secured by the pressure of financial circumstances.⁹ When a party pleads economic duress, that party must have had no reasonable alternative to the action it now seeks to avoid, such as agreeing to contract, and if a reasonable alternative was available, and there hence was no compelling necessity to submit to the coercive demands, economic duress cannot be established.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

The doctrine of duress involves unfair dealing at the contract formation stage. [Kindred Nursing Centers Ltd. Partnership v. Clark](#), 137 S. Ct. 1421 (2017).

Under New York law, in order to prevail on claim to set aside contract on grounds of economic duress, plaintiff must show: (1) threats of an unlawful act by one party, which (2) compel performance by the other party of an act which it had legal right to abstain from performing. [In re Lehman Brothers Holdings Inc.](#), 519 B.R. 47 (Bankr. S.D. N.Y. 2014).

The economic duress doctrine serves as a last resort to correct the wrongful exploitation of business exigencies to obtain disproportionate exchanges of value when conventional alternatives and remedies are unavailing. [Hester v. Public Storage](#), 49 Cal. App. 5th 668, 263 Cal. Rptr. 3d 299 (4th Dist. 2020), review denied, (Sept. 9, 2020).

[END OF SUPPLEMENT]

Footnotes

- ¹ In re Laudani, 401 B.R. 9 (Bankr. D. Mass. 2009) (applying Massachusetts law); Tarpv v. County of San Diego, 110 Cal. App. 4th 267, 1 Cal. Rptr. 3d 607 (4th Dist. 2003); Hampton Island, LLC v. HAOP, LLC, 306 Ga. App. 542, 702 S.E.2d 770 (2010); Cabot Corp. v. AVX Corp., 448 Mass. 629, 863 N.E.2d 503 (2007).
As to economic duress and the recovery of illegally exacted taxes, see Am. Jur. 2d, State and Local Taxation § 973.
- ² Ellipso, Inc. v. Mann, 541 F. Supp. 2d 365 (D.D.C. 2008) (applying District of Columbia law); Mazurkiewicz v. New York City Health and Hospitals Corp., 585 F. Supp. 2d 491 (S.D. N.Y. 2008), judgment aff'd, 356 Fed. Appx. 521 (2d Cir. 2009); Fifth Third Bank v. McClure Properties, Inc., 724 F. Supp. 2d 598 (S.D. W. Va. 2010) (applying West Virginia law); Brown v. First Federal Bank, 95 So. 3d 803 (Ala. Civ. App. 2012); Cox v. McLaughlin, 315 Ark. 338, 867 S.W.2d 460 (1993); Saint Alphonsus Regional Medical Center, Inc. v. Krueger, 124 Idaho 501, 861 P.2d 71 (Ct. App. 1992); Eulrich v. Snap-On Tools Corp., 121 Or. App. 25, 853 P.2d 1350 (1993), cert. granted, judgment vacated on other grounds, 512 U.S. 1231, 114 S. Ct. 2731, 129 L. Ed. 2d 854 (1994); Kendrick v. Barker, 2001 WY 2, 15 P.3d 734 (Wyo. 2001).
As to the lack of an alternative as an element of duress, generally, see § 24.
- ³ GlobalRock Networks, Inc. v. MCI Communications Services, Inc., 943 F. Supp. 2d 320 (N.D. N.Y. 2013) (applying Oklahoma law); Perez v. Uline, Inc., 157 Cal. App. 4th 953, 68 Cal. Rptr. 3d 872 (4th Dist. 2007); BDG International, Inc. v. Bowers, 2013 COA 52, 303 P.3d 140 (Colo. App. 2013).
- ⁴ Abdulla v. Klosinski, 898 F. Supp. 2d 1348 (S.D. Ga. 2012), appeal dismissed, (11th Circ. 12-15448) (Dec. 27, 2012) and aff'd, 523 Fed. Appx. 580 (11th Cir. 2013) (applying Georgia law); Cooperative Resource Center, Inc. v. Southeast Rural Community Assistance Project, Inc., 256 Ga. App. 719, 569 S.E.2d 545 (2002); Rubin v. Laser, 301 Ill. App. 3d 60, 234 Ill. Dec. 592, 703 N.E.2d 453 (1st Dist. 1998).
- ⁵ Gibson v. Wal-Mart Stores Inc., 181 F.3d 1163 (10th Cir. 1999) (applying Wyoming law); Kehoe Component Sales Inc. v. Best Lighting Products, Inc., 933 F. Supp. 2d 974 (S.D. Ohio 2013) (applying Ohio law); Pochat v. State Farm Mut. Auto. Ins. Co., 772 F. Supp. 2d 1062 (D.S.D. 2011) (applying South Dakota law); In re Laudani, 401 B.R. 9 (Bankr. D. Mass. 2009) (applying Massachusetts law); Okoli v. Okoli, 81 Mass. App. Ct. 381, 963 N.E.2d 737 (2012), review denied, 463 Mass. 1111, 977 N.E.2d 561 (2012); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).
- ⁶ Abdulla v. Klosinski, 898 F. Supp. 2d 1348 (S.D. Ga. 2012), appeal dismissed, (11th Circ. 12-15448) (Dec. 27, 2012) and aff'd, 523 Fed. Appx. 580 (11th Cir. 2013) (applying Georgia law).
- ⁷ Minnelli v. Soumayah, 41 A.D.3d 388, 839 N.Y.S.2d 727 (1st Dep't 2007).
- ⁸ Manno v. Mutual Ben. Health and Acc. Ass'n, 18 Misc. 2d 80, 187 N.Y.S.2d 709 (Sup 1959); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).
- ⁹ Interpharm, Inc. v. Wells Fargo Bank, Nat. Ass'n, 655 F.3d 136 (2d Cir. 2011) (applying New York law); Mears v. Safeco Ins. Co. of Illinois, 888 F. Supp. 2d 1048 (D. Mont. 2012) (applying Montana law); Mandavia v. Columbia University, 912 F. Supp. 2d 119, 293 Ed. Law Rep. 335 (S.D. N.Y. 2012) (applying New York law); Bank of America, N.A. v. 108 N. State Retail LLC, 401 Ill. App. 3d 158, 340 Ill. Dec. 323, 928 N.E.2d 42 (1st Dist. 2010); Hughes v. Pullman, 2001 MT 216, 306 Mont. 420, 36 P.3d 339 (2001).
- ¹⁰ Lanigan v. City of Los Angeles, 199 Cal. App. 4th 1020, 132 Cal. Rptr. 3d 156 (2d Dist. 2011), review denied, (Jan. 11, 2012).

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

3. Economic Duress or Business Compulsion

§ 20. Purpose and scope

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(2)

The economic duress doctrine seeks to impose certain minimal standards of business ethics in the marketplace.¹ The doctrine's scope is limited because ordinary hard bargaining is acceptable, and even desirable, in our economic system and should not be discouraged by courts.²

The doctrine of economic duress applies only to special, unusual, or extraordinary situations in which unjustified coercion is used to induce a contract, such as cases in which extortive measures are employed, or improper or unjustified demands are made, under such circumstances that the victim has little choice but to accede.³ Thus, even if one sophisticated business entity enjoys a decided economic advantage over another such entity, the applicability of the doctrine is extremely circumscribed.⁴

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Footnotes

¹ [Strickland Tower Maintenance, Inc. v. AT & T Communications, Inc.](#), 128 F.3d 1422 (10th Cir. 1997) (applying Oklahoma law).

² [Strickland Tower Maintenance, Inc. v. AT & T Communications, Inc.](#), 128 F.3d 1422 (10th Cir. 1997) (applying Oklahoma law); [Cabot Corp. v. AVX Corp.](#), 448 Mass. 629, 863 N.E.2d 503 (2007).

³ [Stephens v. Alabama State Docks Terminal Ry.](#), 723 So. 2d 83 (Ala. Civ. App. 1998); [Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc.](#), 2001 SD 36, 623 N.W.2d 484 (S.D. 2001); [Berardi v. Meadowbrook Mall Co.](#), 212 W. Va. 377, 572 S.E.2d 900 (2002).

Because an element of economic duress is present when many contracts are formed or releases given, the ability of a party to disown his obligations under a contract or release, based on economic duress, is reserved for extreme and

extraordinary cases. [Cabot Corp. v. AVX Corp.](#), 448 Mass. 629, 863 N.E.2d 503 (2007).

⁴ [Berardi v. Meadowbrook Mall Co.](#), 212 W. Va. 377, 572 S.E.2d 900 (2002).

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25 Am. Jur. 2d Duress and Undue Influence § 21

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

3. Economic Duress or Business Compulsion

§ 21. Wrongful act or threat

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(2)

The defense of economic duress requires a coercive wrongful act on the part of the other party¹ that deprives the victim of his or her free will² and a causal link between the coercive wrongful act and the victim's economic distress.³ Thus, a threat to withhold performance that one is contractually obligated to provide in order to compel the other party to submit to new demands can constitute a wrongful threat.⁴ By contrast, to have to choose between resigning or being fired may constitute an unpleasant choice, but absent other compelling circumstances, it does not constitute duress.⁵

It has been held that economic duress does not necessarily involve an unlawful act but may arise from an act that is so coercive as to cause a reasonably prudent person, faced with no reasonable alternative, to agree to an unfavorable contract.⁶ Similarly, it has been held that, in the context of economic duress, the acts or threats constituting the duress must be wrongful not necessarily in the legal but in a moral or equitable sense.⁷ However, it has also been held that the defense of economic duress cannot be predicated upon a demand that is lawful or upon doing or threatening to do that which a party has a legal right to do⁸ or refusing to do that which it is not legally required to do.⁹ In other words, it has been held that acts that are wrongful only in the moral sense cannot create economic duress invalidating a contract.¹⁰

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Footnotes

¹ [Suwannee Swifty Stores, Inc. v. NationsBank, N.A.](#), 245 Ga. App. 198, 536 S.E.2d 299 (2000); [Hurd v. Wildman, Harrold, Allen and Dixon](#), 303 Ill. App. 3d 84, 236 Ill. Dec. 482, 707 N.E.2d 609 (1st Dist. 1999); [Ruane v. Jancsics](#), 2001 Mass. App. Div. 103, 45 U.C.C. Rep. Serv. 2d 1122 (2001); [Quigley v. KPMG Peat Marwick, LLP](#), 330 N.J. Super. 252, 749 A.2d 405 (App. Div. 2000); [Sheet Metal Workers Natl. Pension Fund v. Bryden House Ltd. Partnership](#), 130 Ohio App. 3d 132, 719 N.E.2d 646 (10th Dist. Franklin County 1998); [Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc.](#), 2001 SD 36, 623 N.W.2d 484 (S.D. 2001); [ABB Kraftwerke Aktiengesellschaft v.](#)

Brownsville Barge & Crane, Inc., 115 S.W.3d 287 (Tex. App. Corpus Christi 2003).

2 Scovill v. WSYX/ABC, Sinclair Broadcast Group, Inc., 312 F. Supp. 2d 955 (S.D. Ohio 2004), aff'd in part, rev'd in part on other grounds, 425 F.3d 1012, 2005 FED App. 0409P (6th Cir. 2005) (unfettered will); Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 749 A.2d 405 (App. Div. 2000).

3 Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).

4 Interpharm, Inc. v. Wells Fargo Bank, Nat. Ass'n, 655 F.3d 136 (2d Cir. 2011) (applying New York law).

5 Maust v. Bank One Columbus, N.A., 83 Ohio App. 3d 103, 614 N.E.2d 765 (10th Dist. Franklin County 1992).

6 Tarpv v. County of San Diego, 110 Cal. App. 4th 267, 1 Cal. Rptr. 3d 607 (4th Dist. 2003); Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 749 A.2d 405 (App. Div. 2000).

7 In re Nickels Midway Pier, LLC, 383 B.R. 595 (D.N.J. 2008), aff'd, 348 Fed. Appx. 781 (3d Cir. 2009) (applying New Jersey law); In re Olde Prairie Block Owner, LLC, 441 B.R. 298 (Bankr. N.D. Ill. 2010) (applying Illinois law); Bank of America, N.A. v. 108 N. State Retail LLC, 401 Ill. App. 3d 158, 340 Ill. Dec. 323, 928 N.E.2d 42 (1st Dist. 2010); Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 749 A.2d 405 (App. Div. 2000).

8 Bank of America, N.A. v. 108 N. State Retail LLC, 401 Ill. App. 3d 158, 340 Ill. Dec. 323, 928 N.E.2d 42 (1st Dist. 2010); In re Estate of Davis, 832 So. 2d 534 (Miss. Ct. App. 2001); Madey v. Carman, 51 A.D.3d 985, 858 N.Y.S.2d 784 (2d Dep't 2008); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).

9 Rochelle Associates v. Fleet Bank of New York, 230 A.D.2d 605, 645 N.Y.S.2d 798 (1st Dep't 1996).
A party cannot be guilty of economic duress for failing to grant further forbearance when it has no legal duty to do so. Interpharm, Inc. v. Wells Fargo Bank, Nat. Ass'n, 655 F.3d 136 (2d Cir. 2011) (applying New York law); In re Marketxt Holdings Corp., 361 B.R. 369 (Bankr. S.D. N.Y. 2007) (applying New York law).

10 Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).

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25 Am. Jur. 2d Duress and Undue Influence § 22

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

3. Economic Duress or Business Compulsion

§ 22. Particular circumstances

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(2)

Business compulsion or economic duress is not established merely by proof that consent to a contract was secured by the pressure of financial circumstances that are not caused by the other party,¹ especially if the party claiming duress is experienced in business.² Fear of financial ruin or economic hardship, alone, is insufficient to establish economic duress³ even in the context of unequal bargaining power.⁴

Economic duress is not established by evidence that one party insisted upon a legal right, and the other party yielded to that insistence.⁵ In other words, economic duress cannot be predicated upon a demand that is lawful⁶ or upon doing or threatening to do something that the a party has a legal right to do,⁷ such as filing a justifiable statutory lien.⁸ Similarly, the economic duress doctrine cannot be invoked by alleging that the opposing party took advantage of a person's weak negotiating position.⁹

Entering into a contract with reluctance or even dissatisfaction with its terms because of economic necessity does not, of itself, constitute economic duress invalidating the contract.¹⁰ Moreover, a party to a contract cannot invoke a duress defense where his or her own advisor or representative pressured the party into acceptance of a deal.¹¹

On the other hand, a threat of serious financial loss is sufficient to constitute duress and ground for relief if an ordinary suit at law or equity might not be an adequate remedy.¹² Also, duress may exist if a wrongful act of one party created the other party's financial difficulty.¹³

Observation:

While there is an element of compulsion any time a creditor asks a debtor in default to agree to anything, in that the creditor holds

the upper hand, a creditor's exercise of its right to declare a loan in default or to forbear from taking such action only upon a debtor's agreeing to certain modifications in the agreement between the parties is not wrongful conduct and therefore does not constitute economic duress.¹⁴

The mere fact that an agreement is entered into when a person is in shock and distraught is not sufficient to constitute economic duress; emotional distress is not the equivalent of duress.¹⁵

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Footnotes

- ¹ Interpharm, Inc. v. Wells Fargo Bank, Nat. Ass'n, 655 F.3d 136 (2d Cir. 2011) (applying New York law); Castellano v. Wal-Mart Stores, Inc., 373 F.3d 817 (7th Cir. 2004) (applying Illinois law); Ariel Preferred Retail Group, LLC v. CWC Capital Asset Management, 883 F. Supp. 2d 797 (E.D. Mo. 2012) (applying Missouri law); Kehoe Component Sales Inc. v. Best Lighting Products, Inc., 933 F. Supp. 2d 974 (S.D. Ohio 2013) (applying Ohio law); Mobility Systems and Equipment Company v. U.S., 51 Fed. Cl. 233 (2001); ABB Kraftwerke Aktiengesellschaft v. Brownsville Barge & Crane, Inc., 115 S.W.3d 287 (Tex. App. Corpus Christi 2003).
- ² Smith v. Ducote, 398 So. 2d 190 (La. Ct. App. 3d Cir. 1981), writ denied, 405 So. 2d 531 (La. 1981); Welford Realty, Inc. v. Brause, 93 A.D.2d 758, 461 N.Y.S.2d 317 (1st Dep't 1983), order aff'd, 60 N.Y.2d 623, 467 N.Y.S.2d 352, 454 N.E.2d 935 (1983).
- ³ Apfelblat v. National Bank Wyandotte-Taylor, 158 Mich. App. 258, 404 N.W.2d 725, 4 U.C.C. Rep. Serv. 2d 336 (1987).
- ⁴ Mandavia v. Columbia University, 912 F. Supp. 2d 119, 293 Ed. Law Rep. 335 (S.D. N.Y. 2012) (applying New York law); Okoli v. Okoli, 81 Mass. App. Ct. 381, 963 N.E.2d 737 (2012), review denied, 463 Mass. 1111, 977 N.E.2d 561 (2012); Grubel v. Union Mut. Life Ins. Co., 54 A.D.2d 686, 387 N.Y.S.2d 442 (2d Dep't 1976).
- ⁵ Lomas & Nettleton Co. v. Tiger Enterprises, Inc., 99 Idaho 539, 585 P.2d 949 (1978).
- ⁶ Newland v. Child, 73 Idaho 530, 254 P.2d 1066 (1953).
- ⁷ In re Estate of Davis, 832 So. 2d 534 (Miss. Ct. App. 2001); Matthews v. Matthews, 725 S.W.2d 275 (Tex. App. Houston 1st Dist. 1986), writ refused n.r.e., (July 8, 1987); Emrich v. Gardner & Hitchings, Inc., 51 Wash. 2d 528, 320 P.2d 288 (1958).
As to threats to execute or enforce legal rights, generally, see § 14.
- ⁸ Emrich v. Gardner & Hitchings, Inc., 51 Wash. 2d 528, 320 P.2d 288 (1958).
- ⁹ Strickland Tower Maintenance, Inc. v. AT & T Communications, Inc., 128 F.3d 1422 (10th Cir. 1997) (applying Oklahoma law); Society of the Holy Transfiguration Monastery, Inc. v. Archbishop Gregory of Denver, Colorado, 685 F. Supp. 2d 217 (D. Mass. 2010), decision aff'd, 689 F.3d 29 (1st Cir. 2012), cert. denied, 133 S. Ct. 1315, 185 L. Ed. 2d 195 (2013) (applying Massachusetts law).
- ¹⁰ Clark v. Liberty Nat. Life Ins. Co., 592 So. 2d 564 (Ala. 1992).
- ¹¹ Mandavia v. Columbia University, 912 F. Supp. 2d 119, 293 Ed. Law Rep. 335 (S.D. N.Y. 2012) (applying New York law).
- ¹² Hopkins v. New Day Financial, 643 F. Supp. 2d 704 (E.D. Pa. 2009) (applying Pennsylvania law); Brink v. Kansas City, 355 Mo. 860, 198 S.W.2d 710 (1946).
- ¹³ Hopkins v. New Day Financial, 643 F. Supp. 2d 704 (E.D. Pa. 2009) (applying Pennsylvania law); Inter-Tel, Inc. v.

Bank of America, Arizona, 195 Ariz. 111, 985 P.2d 596 (Ct. App. Div. 1 1999).

¹⁴ Glenfed Financial Corp., Commercial Finance Div. v. Penick Corp., 276 N.J. Super. 163, 647 A.2d 852, 26 U.C.C. Rep. Serv. 2d 55 (App. Div. 1994).

¹⁵ Blubaugh v. Turner, 842 P.2d 1072 (Wyo. 1992).

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25 Am. Jur. 2d Duress and Undue Influence § 23

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

B. Coercion; Wrongful Act or Threat

3. Economic Duress or Business Compulsion

§ 23. Use as defense or cause of action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(2)

Economic duress is frequently described as a defense,¹ and it has been held that economic duress may be used only as a defense rather than as a cause of action.² However, it has also been held that an action may be brought to recover damages for “economic coercion,”³ and some courts have analyzed economic duress cases in terms of a tort theory.⁴

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Footnotes

¹ [FAMM Steel, Inc. v. Sovereign Bank](#), 571 F.3d 93 (1st Cir. 2009) (applying Massachusetts law); [Siddle v. Crants](#), 650 F. Supp. 2d 773 (M.D. Tenn. 2009) (applying Tennessee law); [Compris Technologies, Inc., v. Techwerks, Inc.](#), 274 Ga. App. 673, 618 S.E.2d 664 (2005); [Bank of America, N.A. v. 108 N. State Retail LLC](#), 401 Ill. App. 3d 158, 340 Ill. Dec. 323, 928 N.E.2d 42 (1st Dist. 2010).

² [ChampionsWorld LLC v. U.S. Soccer Federation, Inc.](#), 726 F. Supp. 2d 961 (N.D. Ill. 2010) (applying Illinois law); [Bank Leumi Trust Co. of New York v. D'Evori Intern., Inc.](#), 163 A.D.2d 26, 558 N.Y.S.2d 909 (1st Dep't 1990).

³ [Housing Authority of City of Dallas v. Hubbell](#), 325 S.W.2d 880 (Tex. Civ. App. Dallas 1959), writ refused n.r.e., (Oct. 28, 1959) (action by subcontractor against housing authority for coercion in compelling him to apply two coats of paint where specifications called for only one coat).

⁴ [Pecos Const. Co. v. Mortgage Inv. Co. of El Paso](#), 1969-NMSC-134, 80 N.M. 680, 459 P.2d 842 (1969); [Housing Authority of City of Dallas v. Hubbell](#), 325 S.W.2d 880 (Tex. Civ. App. Dallas 1959), writ refused n.r.e., (Oct. 28, 1959); [Wurtz v. Fleischman](#), 89 Wis. 2d 291, 278 N.W.2d 266 (Ct. App. 1979), judgment rev'd on other grounds, 97 Wis. 2d 100, 293 N.W.2d 155, 12 A.L.R.4th 1254 (1980).

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I. Duress

C. Lack of Other Relief or Alternative Action

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West's Key Number Digest, [Payment](#) 🔑 87(1), 87(2)

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A.L.R. Index, Undue Influence

West's A.L.R. Digest, [Contracts](#) 🔑 95(1)

West's A.L.R. Digest, [Payment](#) 🔑 87(1), 87(2)

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I. Duress


C. Lack of Other Relief or Alternative Action

§ 24. Generally

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West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1), 87(2)

The doctrine of duress requires that the party allegedly acting under duress must have had no means of immediate relief from the actual or threatened duress other than complying with the demand.¹ In other words, there must have been no reasonable alternative.² Thus, an action taken as a result of a deliberate choice of alternatives cannot ordinarily be ascribed to duress.³

However, an alternative or remedy available must be adequate to nullify a claim of duress,⁴ and the adequacy of the remedy is to be tested by a practical standard, which takes into consideration the exigencies of the situation of the alleged victim.⁵ For example, an alternative or remedy may be inadequate if the delay involved in pursuing that remedy may cause immediate and irreparable loss to one's economic or business interest.⁶

Practice Tip:

An objective test determines whether a party to a contract allegedly obtained by duress has a reasonable alternative to accepting the terms.⁷

A legal resolution to a dispute is a reasonable alternative to accepting contract terms and can defeat a claim of economic duress.⁸

Footnotes

- ¹ In re Marketxt Holdings Corp., 361 B.R. 369 (Bankr. S.D. N.Y. 2007) (applying New York law); Inland Empire Refineries v. Jones, 69 Idaho 335, 206 P.2d 519 (1949); Imperial Refineries Corp. v. Morrissey, 254 Iowa 934, 119 N.W.2d 872 (1963).
- ² Baptist v. City of Kankakee, 481 F.3d 485 (7th Cir. 2007), as amended, (Mar. 26, 2007); Krossa v. All Alaskan Seafoods, Inc., 37 P.3d 411 (Alaska 2001); Moss v. Davis, 794 A.2d 1288 (Del. Fam. Ct. 2001); In re Marriage of Spiegel, 553 N.W.2d 309 (Iowa 1996); Boud v. SDNCO, Inc., 2002 UT 83, 54 P.3d 1131, 48 U.C.C. Rep. Serv. 2d 532 (Utah 2002); Machinery Hauling, Inc. v. Steel of West Virginia, 181 W. Va. 694, 384 S.E.2d 139 (1989).
- ³ Seward v. B.O.C. Div. of General Motors Corp., 805 F. Supp. 623 (N.D. Ill. 1992); Vail/Arrowhead, Inc. v. District Court for the Fifth Judicial Dist., Eagle County, 954 P.2d 608 (Colo. 1998).
- ⁴ Cabot Corp. v. AVX Corp., 448 Mass. 629, 863 N.E.2d 503 (2007); Sosnoff v. Carter, 165 A.D.2d 486, 568 N.Y.S.2d 43 (1st Dep't 1991).
- ⁵ Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co., 584 P.2d 15, 9 A.L.R.4th 928 (Alaska 1978).
- ⁶ Austin Instrument, Inc. v. Loral Corp., 29 N.Y.2d 124, 324 N.Y.S.2d 22, 272 N.E.2d 533 (1971).
- ⁷ Pochat v. State Farm Mut. Auto. Ins. Co., 772 F. Supp. 2d 1062 (D.S.D. 2011) (applying South Dakota law); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).
- ⁸ Pochat v. State Farm Mut. Auto. Ins. Co., 772 F. Supp. 2d 1062 (D.S.D. 2011) (applying South Dakota law); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).

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25 Am. Jur. 2d Duress and Undue Influence § 25

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Duress and Undue Influence

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I. Duress


C. Lack of Other Relief or Alternative Action

§ 25. Effect of ability to consult with counsel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1), 87(2)

It has been held that there can be no duress if the contracting party is free to come and go and to consult counsel.¹ However, it has been held that, while the presence of counsel will not per se defeat a claim of economic duress, a court must determine if an attorney had an opportunity for meaningful input under the circumstances.² Under this view, a finding of duress is less likely if the party has the assistance of counsel and adequate time to consider the proposed contractual terms.³ In fact, in situations in which a party is sophisticated and represented by counsel, duress rarely exists⁴ and is not available to void a contract.⁵

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Footnotes

¹ [Glass v. City of Philadelphia](#), 455 F. Supp. 2d 302 (E.D. Pa. 2006) (applying Pennsylvania law); [Compris Technologies, Inc., v. Techwerks, Inc.](#), 274 Ga. App. 673, 618 S.E.2d 664 (2005); [Degenhardt v. Dillon Co.](#), 543 Pa. 146, 669 A.2d 946 (1996).

² [Berardi v. Meadowbrook Mall Co.](#), 212 W. Va. 377, 572 S.E.2d 900 (2002).

³ [Doubleclick Inc. v. Paikin](#), 402 F. Supp. 2d 1251 (D. Colo. 2005) (applying Colorado law); [Krilich v. American Nat. Bank and Trust Co. of Chicago](#), 334 Ill. App. 3d 563, 268 Ill. Dec. 531, 778 N.E.2d 1153 (2d Dist. 2002); [Medina Supply Co. v. Corrado](#), 116 Ohio App. 3d 847, 689 N.E.2d 600 (8th Dist. Cuyahoga County 1996).

⁴ [In re Sea Turtle Cinemas, Inc.](#), 440 B.R. 438 (Bankr. D. S.C. 2010).

⁵ [Hampton Island, LLC v. HAOP, LLC](#), 306 Ga. App. 542, 702 S.E.2d 770 (2010).

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I. Duress

D. Effect

§ 26. Generally

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West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 4](#) (Complaint, petition, or declaration—To declare deed null and void—Deed obtained by duress)

Duress vitiates consent to a contract¹ and therefore generally renders a contract or conveyance voidable, rather than void, at the option of the victim.² Thus, the contract can be ratified³ and is valid until it is avoided by the person entitled to avoid it.⁴ However, duress in the form of physical compulsion, in which a party is caused to appear to assent when he or she has no intention of doing so, renders the resulting purported contract void.⁵

Duress is a defense to a contract claim.⁶ An instrument procured by duress is subject to judicial cancellation,⁷ and one making a compromise as a result of duress may have it invalidated.⁸ Also, money paid under duress may generally be recovered,⁹ and a recipient of money paid under duress is a constructive trustee.¹⁰

Under the voluntary payment doctrine, a payment that is made under duress is not voluntary and may be recovered.¹¹

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¹ [Reimonenq v. Foti](#), 72 F.3d 472 (5th Cir. 1996) (applying Louisiana law); [Degenhardt v. Dillon Co.](#), 543 Pa. 146, 669 A.2d 946 (1996); [Kendrick v. Barker](#), 2001 WY 2, 15 P.3d 734 (Wyo. 2001).

- ² Contempo Design, Inc. v. Chicago and N.E. Ill. Dist. Council of Carpenters, 226 F.3d 535 (7th Cir. 2000); Clark v. Riverview Fire Protection Dist., 354 F.3d 752 (8th Cir. 2004) (applying Missouri law); In re Laudani, 401 B.R. 9 (Bankr. D. Mass. 2009) (applying Massachusetts law); Vail/Arrowhead, Inc. v. District Court for the Fifth Judicial Dist., Eagle County, 954 P.2d 608 (Colo. 1998); Rubin v. Laser, 301 Ill. App. 3d 60, 234 Ill. Dec. 592, 703 N.E.2d 453 (1st Dist. 1998); Robert's Hair Designers, Inc. v. Pearson, 780 N.E.2d 858 (Ind. Ct. App. 2002); In re Marriage of Spiegel, 553 N.W.2d 309 (Iowa 1996); Monterrey Center, LLC v. Education Partners, Inc., 5 So. 3d 225 (La. Ct. App. 1st Cir. 2008); Cabot Corp. v. AVX Corp., 448 Mass. 629, 863 N.E.2d 503 (2007); Richards v. Allianz Life Ins. Co. of North America, 133 N.M. 30, 59 P.3d 1262 (2002); Blumenthal v. Tener, 227 A.D.2d 183, 642 N.Y.S.2d 26 (1st Dep't 1996); Gainey v. Gainey, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009); In re Adoption of B.T.D., 2003 UT App 99, 68 P.3d 1021 (Utah Ct. App. 2003).
- ³ §§ 29 to 31.
- ⁴ Glenney v. Crane, 352 S.W.2d 773 (Tex. Civ. App. Houston 1961), writ refused n.r.e., (May 16, 1972).
- ⁵ Restatement Second, Contracts § 174.
- ⁶ Am. Jur. 2d, Contracts § 218.
As to pleading duress, see § 32.
- ⁷ Am. Jur. 2d, Cancellation of Instruments §§ 22 to 24.
- ⁸ Am. Jur. 2d, Compromise and Settlement §§ 34, 35.
- ⁹ Am. Jur. 2d, Restitution and Implied Contracts §§ 97 to 106.
- ¹⁰ Hochman v. Zigler's Inc., 139 N.J. Eq. 139, 50 A.2d 97 (Ch. 1946).
- ¹¹ Ramirez v. Smart Corp., 371 Ill. App. 3d 797, 309 Ill. Dec. 168, 863 N.E.2d 800 (3d Dist. 2007).

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Duress and Undue Influence

Marie K. Pesando, J.D.

I. Duress

D. Effect

§ 27. After rights of third persons have intervened

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

West's Key Number Digest, [Payment](#)  87(1)

The fact that a contract was executed under duress and is voidable as between the parties is not a defense as against a bona fide purchaser.¹ Hence, an innocent purchaser for value of real property will be protected in his or her purchase even if the execution of a deed of the property to a former grantee was produced by duress.²

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Footnotes

¹ U.S. for Use of Trane Co. v. Bond, 322 Md. 170, 586 A.2d 734 (1991).

² Am. Jur. 2d, Deeds § 173.

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D. Effect

§ 28. Rescission; limitations and laches

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West's Key Number Digest

West's Key Number Digest, [Contracts](#)  95(1)

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[What statute of limitations applies to an action, based on duress, to recover money or property, 77 A.L.R.2d 821](#)

[Ratification of contract voidable for duress, 77 A.L.R.2d 426](#)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 10](#) (Answer—Defense—Repudiation barred by unreasonable delay in seeking avoidance)

Duress is a basis for rescinding a contract,¹ and a judicial cancellation or rescission of an instrument procured by duress may be obtained in a proper case.²

A person who is entitled to rescind or repudiate a contract or transaction on the ground of duress should act promptly after the duress has been removed,³ or he or she will be deemed to have elected to affirm it.⁴ However, under some circumstances, relief will not be denied because a person has not rescinded an agreement promptly for duress.⁵

It has been held that an action for relief on the ground of duress is governed by the statute of limitations applicable to fraud.⁶ However, it has also been held that such an action is not governed by the statute of limitations for fraud⁷ but by a statute

applicable to an action on an implied contract or obligation⁸ or by a statute applicable to actions for cancellation of an instrument on a ground other than fraud.⁹ Also, it has been held that, if the action for recovery of money or property obtained by duress is primarily one for rescission, the doctrine of laches is applicable, and any specific statutory limitation statute is inapplicable.¹⁰

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Footnotes

- ¹ Professional Service Network, Inc. v. American Alliance Holding Co., 238 F.3d 897 (7th Cir. 2001) (applying Wisconsin law).
- ² Am. Jur. 2d, Cancellation of Instruments §§ 22 to 24.
- ³ Bank Leumi Trust Co. of New York v. D'Evori Intern., Inc., 163 A.D.2d 26, 558 N.Y.S.2d 909 (1st Dep't 1990).
- ⁴ Bank Leumi Trust Co. of New York v. D'Evori Intern., Inc., 163 A.D.2d 26, 558 N.Y.S.2d 909 (1st Dep't 1990); McGee v. Stone, 522 A.2d 211 (R.I. 1987).
- ⁵ Thompson Crane & Trucking Co. v. Eyman, 123 Cal. App. 2d 904, 267 P.2d 1043 (4th Dist. 1954).
- ⁶ Duell v. United Bank of Pueblo, N.A., 892 P.2d 336 (Colo. App. 1994); Meyer v. Shearson Lehman Bros., Inc., 211 A.D.2d 541, 621 N.Y.S.2d 346 (1st Dep't 1995).
- ⁷ Coleman v. Crescent Insulated Wire & Cable Co., 350 Mo. 781, 168 S.W.2d 1060 (1943).
- ⁸ Waters' Estate v. Hoadley, 474 P.2d 85 (Alaska 1970).
- ⁹ Coleman v. Crescent Insulated Wire & Cable Co., 350 Mo. 781, 168 S.W.2d 1060 (1943).
- ¹⁰ Leeper v. Beltrami, 53 Cal. 2d 195, 1 Cal. Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803 (1959).

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I. Duress

D. Effect

§ 29. Ratification or waiver

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[Ratification of contract voidable for duress, 77 A.L.R.2d 426](#)

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 9](#) (Answer—Defense—Ratification of contract made under alleged duress)

Because a contract entered into under duress is generally not void but merely voidable,¹ it may be ratified² after the duress is removed.³ Also, reliance upon the defense of duress may be waived.⁴

An intention to ratify a contract allegedly made under duress may be signified in many ways, including intentionally accepting benefits under the contract,⁵ remaining silent or acquiescing in the contract for a long period of time after an opportunity exists to have it declared void, or acting upon the contract by affirmatively acknowledging it or performing under it.⁶

Ratification of duress is an issue of fact for determination by the trier of fact.⁷

Footnotes

¹ § 26.

² Clearwater Const. & Engineering, Inc. v. Wickes Forest Industries, a Div. of the Wickes Corp., 108 Idaho 132, 697 P.2d 1146 (1985); Davis v. Hargett, 244 N.C. 157, 92 S.E.2d 782, 58 A.L.R.2d 494 (1956); Bair v. Spokane Sav. Bank, 186 Wash. 472, 58 P.2d 819 (1936).

³ § 30.

⁴ Frame v. Booth, Wade & Campbell, 238 Ga. App. 428, 519 S.E.2d 237 (1999).

⁵ Keshishian v. CMC Radiologists, 142 N.H. 168, 698 A.2d 1228 (1997); David v. American Tel. & Tel. Co., 160 A.D.2d 632, 559 N.Y.S.2d 505 (1st Dep't 1990).

⁶ Clearwater Const. & Engineering, Inc. v. Wickes Forest Industries, a Div. of the Wickes Corp., 108 Idaho 132, 697 P.2d 1146 (1985); Keshishian v. CMC Radiologists, 142 N.H. 168, 698 A.2d 1228 (1997); National Auto Brokers Corp. v. Aleeda Development Corp., 243 Pa. Super. 101, 364 A.2d 470 (1976).

Mortgagors would not be permitted to avoid a mortgage agreement on the ground that the mortgagees had obtained the mortgage by threatening one mortgagor with prosecution for certain criminal acts because the evidence reflected the exercise of the mortgagor's free will to accept the benefits of the mortgage agreement, and the mortgagors waited one full year to assert duress and disaffirm the contract. *Kranitz v. Strober Organization, Inc.*, 181 A.D.2d 441, 580 N.Y.S.2d 350 (1st Dep't 1992).

⁷ Mountain Elec. Co. v. Swartz, 87 Idaho 403, 393 P.2d 724 (1964).

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§ 30. Ratification or waiver—Removal of duress as prerequisite

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[Ratification of contract voidable for duress, 77 A.L.R.2d 426](#)

[Joining in instrument as ratification of or estoppel as to prior ineffective instrument affecting real property, 7 A.L.R.2d 294](#)

While a contract that is voidable for duress may be ratified by either express consent or conduct inconsistent with anything other than approval, the intention to ratify is an essential element and is at the foundation of the doctrine of waiver or ratification.¹ Ratification occurs only if, at the time of ratification, the victim has full knowledge of the facts and is capable of acting freely.² Thus, it is essential that the influence of the duress be removed prior to the alleged ratifying conduct;³ there can be no ratification while the duress continues.⁴

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Footnotes

¹ [Heider v. Unicume, 142 Or. 410, 20 P.2d 384 \(1933\).](#)

² [Hill v. Hill, 94 N.C. App. 474, 380 S.E.2d 540 \(1989\).](#)

³ [Mullan v. Bishop of the Diocese of Orlando, 540 So. 2d 174, 52 Ed. Law Rep. 1315 \(Fla. 5th DCA 1989\).](#)

⁴ Fallston Finishing, Inc. v. First Union Nat. Bank, 76 N.C. App. 347, 333 S.E.2d 321 (1985); Levine v. Teal, 1944 OK 34, 193 Okla. 495, 145 P.2d 386 (1944); Avco Financial Services, Inc. v. Johnson, 596 P.2d 658 (Utah 1979).

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§ 31. Ratification or waiver—Particular actions as ratification

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Delay in repudiating or seeking relief from a transaction or contract after the duress has been removed may constitute ratification or at least tend to indicate it.¹ Also, silence after the opportunity has arisen to repudiate a transaction or contract for duress may amount to or indicate ratification.²

A contract that was procured by duress is ratified if the victim performs under the contract after the duress has been removed.³ Also, the contract is ratified if the victim either affirmatively acknowledges the validity of the contract⁴ or impliedly acknowledges its validity by failing to return the consideration,⁵ failing to object,⁶ or allowing other persons to act on the contract in such a way as would be to their detriment if the contract was not upheld.⁷

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Footnotes

¹ *Abbadessa v. Moore Business Forms, Inc.*, 987 F.2d 18 (1st Cir. 1993) (five months too long); *Young v. Data Switch Corp.*, 231 Conn. 95, 646 A.2d 852 (1994) (17 months too long); *Schmalz v. Hardy Salt Co.*, 739 S.W.2d 765 (Mo. Ct. App. E.D. 1987) (three months too long); *McGee v. Stone*, 522 A.2d 211 (R.I. 1987) (18 months too long).

² *Clearwater Const. & Engineering, Inc. v. Wickes Forest Industries, a Div. of the Wickes Corp.*, 108 Idaho 132, 697 P.2d 1146 (1985); *National Auto Brokers Corp. v. Aleeda Development Corp.*, 243 Pa. Super. 101, 364 A.2d 470 (1976).

³ *Weisert v. Bramman*, 358 Mo. 636, 216 S.W.2d 430 (1948); *Dairy Co-op. Ass'n v. Brandes Creamery*, 147 Or. 488, 30 P.2d 338 (1934).

⁴ *Mobley v. Coast House, Ltd.*, 182 Ga. App. 305, 355 S.E.2d 686 (1987); *Vandine v. Vandine*, 171 Kan. 626, 237 P.2d 224 (1951) (signing renewal note six years after original).

⁵ Mobley v. Coast House, Ltd., 182 Ga. App. 305, 355 S.E.2d 686 (1987).

⁶ McGee v. Stone, 522 A.2d 211 (R.I. 1987).

⁷ Barnette v. Wells Fargo Nevada Nat. Bank of San Francisco, 270 U.S. 438, 46 S. Ct. 326, 70 L. Ed. 669 (1926).

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§ 32. Generally; pleading

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Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 3](#) (Checklist—Drafting an allegation or a defense of duress)

Duress cannot be proved, either as a defense or as a cause of action, unless it is specially pleaded,¹ and this rule applies to the doctrine of business compulsion.²

The petition or answer must state distinctly the particular acts and coercion relied on in alleging duress, specifying by whom and in what manner they were perpetrated, with such definiteness and reasonable certainty that the court may see that, if proved, they will amount to duress in law.³ General allegations of duress, threats, or compulsion are insufficient to raise any issue of duress,⁴ and alleging a conclusion of law will not serve as the basis for the introduction of testimony to prove duress.⁵

Under the Federal Rules of Civil Procedure, duress must be affirmatively set forth.⁶

Practice Tip:

Exhaustion of remedies is not a prerequisite to suing for duress because, if it were, the party allegedly engaging in duress might be able to use the costs of suit as leverage to obtain an undeserved benefit.⁷

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Footnotes

- ¹ [Bennett v. Automobile Ins. Co. of Hartford](#), 230 Conn. 795, 646 A.2d 806 (1994); [Imperial Refineries Corp. v. Morrissey](#), 254 Iowa 934, 119 N.W.2d 872 (1963); [Bowl-Opp, Inc. v. Bayer](#), 255 Or. 318, 458 P.2d 435 (1969).
- ² [Imperial Refineries Corp. v. Morrissey](#), 254 Iowa 934, 119 N.W.2d 872 (1963).
As to business compulsion or economic duress, generally, see §§ 19 to 23.
- ³ [In re Goldsberry's Estate](#), 95 Utah 379, 81 P.2d 1106, 117 A.L.R. 1444 (1938).
- ⁴ [Warner v. Warner](#), 183 W. Va. 90, 394 S.E.2d 74 (1990).
- ⁵ [Posadas de Puerto Rico, Inc. v. Radin](#), 856 F.2d 399 (1st Cir. 1988) (declaration in opposition to summary judgment was too conclusory as to duress for avoiding gambling debts); [Kohen v. H. S. Crocker Co.](#), 260 F.2d 790 (5th Cir. 1958); [State ex rel. Kabel v. Sewerage and Water Bd. of New Orleans](#), 138 So. 2d 856 (La. Ct. App. 4th Cir. 1962); [Manno v. Mutual Ben. Health and Acc. Ass'n](#), 18 Misc. 2d 80, 187 N.Y.S.2d 709 (Sup 1959).
- ⁶ Fed. R. Civ. P. 8(c).
- ⁷ [Professional Service Network, Inc. v. American Alliance Holding Co.](#), 238 F.3d 897 (7th Cir. 2001) (applying Wisconsin law).

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§ 33. Presumptions and burden of proof

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As a general rule, in the absence of a trust relationship between the parties, the law does not presume that a person has exercised duress upon another.¹ Thus, in accordance with the general rule for affirmative defenses, the burden of proof as to the elements of duress is upon one setting up the defense,² and if the party alleging duress fails to meet this requirement, the defense fails.³ This rule also applies to the doctrine of business compulsion.⁴

However, if there is a confidential or fiduciary relationship between the parties to a transaction that is alleged to have been induced by the exercise of duress, a presumption of duress may arise,⁵ and the burden is then upon the party procuring the transaction to show that duress did not enter into the transaction.⁶

Caution:

If one person is put in the power of another, the law raises the presumption that any transaction between them is through the dictation of the one in a situation to control the other.⁷

However, mere proof of kinship of the parties to a transaction does not give rise to a confidential relationship so as to raise a presumption that a deed was executed as a result of undue influence, duress, or fraud.⁸

Footnotes

- ¹ [Klamath and Moadoc Tribes v. U.S.](#), 296 U.S. 244, 56 S. Ct. 212, 80 L. Ed. 202 (1935).
Where persons deal with each other on equal terms and at arm's length, there is a presumption that the person alleging duress possesses ordinary firmness. [Hamilton v. Hamilton](#), 404 Pa. Super. 533, 591 A.2d 720 (1991).
- ² [Hopper v. Garner](#), 328 Ark. 516, 944 S.W.2d 540 (1997); [Randall v. Rapoza](#), 2001 Mass. App. Div. 153, 46 U.C.C. Rep. Serv. 2d 182 (2001); [Norton v. Michigan State Highway Dept.](#), 315 Mich. 313, 24 N.W.2d 132 (1946).
In a typical duress claim, under which one party threatens to withhold performance under a contract unless the other party agrees to alter the terms of the contract, New York law imposes a burden on the party claiming duress to demonstrate an inability to obtain performance elsewhere. [Cavelli v. New York City Dist. Council of Carpenters](#), 816 F. Supp. 2d 153, 79 A.L.R.6th 759 (E.D. N.Y. 2011).
- ³ [Norton v. Michigan State Highway Dept.](#), 315 Mich. 313, 24 N.W.2d 132 (1946).
- ⁴ [Norton v. Michigan State Highway Dept.](#), 315 Mich. 313, 24 N.W.2d 132 (1946).
As to business compulsion or economic duress, generally, see §§ 19 to 23.
- ⁵ [Rizzi v. Fanelli](#), 63 A.2d 872 (Mun. Ct. App. D.C. 1949); [In re Lundvall's Estate](#), 242 Iowa 430, 46 N.W.2d 535 (1951); [Matter of Bumbaca](#), 182 A.D.2d 756, 582 N.Y.S.2d 749 (2d Dep't 1992).
- ⁶ [In re Lundvall's Estate](#), 242 Iowa 430, 46 N.W.2d 535 (1951).
- ⁷ [Kelly v. Allen](#), 558 S.W.2d 845 (Tenn. 1977).
- ⁸ [Dutcher v. Dutcher](#), 756 S.W.2d 256 (Tenn. Ct. App. 1986).

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§ 34. Admissibility, weight, and sufficiency of evidence

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A statement that is alleged to constitute duress may be admitted under an exception to the hearsay rule for the purpose of showing that it was made by the person so charged.¹

In determining whether there is duress, it is necessary to take into consideration all the facts and circumstances, together with any reasonable inferences which might properly be drawn.² If there is a confidential or fiduciary relationship between the parties to a transaction which is alleged to have been induced by duress, a presumption of the exercise of duress may arise.³

Generally, however, if duress is relied upon as a defense or ground for avoiding a contract, the duress must be proved by clear and satisfactory⁴ or clear and convincing⁵ or clear, satisfactory, and convincing⁶ evidence, and the court is not obliged to submit to the jury evidence that does not measure up to the required standard of proof.⁷

If threats are alleged as grounds for relief, the evidence must demonstrate the actual existence of duress.⁸

Practice Tip:

If an alleged victim of duress is complaining about a contractual term that he or she could have been expected to agree to even if not under duress, the inference of duress is weakened, along with the further inference that duress caused whatever harm the victim is seeking to redress.⁹

The existence of duress is determined by applying subjective as well as objective standards; the subjective element is the

party's personal reaction to the circumstances, and the objective elements are the reasonableness of the fear and the unjustness of the injury, based on how reasonable persons would react to the circumstances.¹⁰

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Footnotes

- ¹ [Balling v. Finch](#), 203 Cal. App. 2d 413, 21 Cal. Rptr. 490 (2d Dist. 1962).
As to admissibility of evidence, generally, see [Am. Jur. 2d, Evidence §§ 301 to 667](#).
- ² [Motor Equipment Co. v. McLaughlin](#), 156 Kan. 258, 133 P.2d 149 (1943).
- ³ [§ 33](#).
- ⁴ [Chatfield v. City of Seattle](#), 198 Wash. 179, 88 P.2d 582, 121 A.L.R. 1279 (1939).
- ⁵ [Lipe v. Thomas](#), 269 Ark. 827, 600 S.W.2d 921 (Ct. App. 1980); [Saint Alphonsus Regional Medical Center, Inc. v. Krueger](#), 124 Idaho 501, 861 P.2d 71 (Ct. App. 1992).
- ⁶ [Northland Sales, Inc. v. Maax Corp.](#), 556 F. Supp. 2d 928 (E.D. Wis. 2008) (applying Wisconsin law).
- ⁷ [Motor Equipment Co. v. McLaughlin](#), 156 Kan. 258, 133 P.2d 149 (1943).
- ⁸ [Western Natural Gas Co. v. Cities Service Gas Co.](#), 57 Del. 436, 201 A.2d 164 (1964).
- ⁹ [Professional Service Network, Inc. v. American Alliance Holding Co.](#), 238 F.3d 897 (7th Cir. 2001) (applying Wisconsin law).
- ¹⁰ [Averette v. Industrial Concepts, Inc.](#), 673 So. 2d 642 (La. Ct. App. 1st Cir. 1996), writ denied, 679 So. 2d 442 (La. 1996).
As to the subjective standard for the victim's reaction, see [§ 7](#).

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§ 35. Trial; questions of law and fact

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What constitutes duress is a matter of law, but whether duress exists in a particular transaction is usually a matter of fact.¹ Thus, ordinarily, in a case involving duress, the following matters are questions of fact: whether statements were such as to deprive a person of the exercise of his or her free will and thus constitute duress,² whether a party acted as a reasonably prudent person in yielding to duress,³ and whether a person charging duress acted as a reasonably prudent person in parting with consideration under duress, in view of an alleged reasonable alternative.⁴

However, under certain circumstances, an act may be held to have been coerced as a matter of law.⁵ While duress is a question of fact for the jury if more than one reasonable inference in regard to it may be drawn, the existence of duress is a matter of law if only one valid or reasonable inference concerning it can be drawn from the evidence.⁶ Thus, a summary judgment on the ground of duress may be entered if there is no dispute of material facts, and only one inference is justified.⁷

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Footnotes

¹ [Massi v. Blue Cross & Blue Shield Mut. of Ohio](#), 765 F. Supp. 904 (N.D. Ohio 1991); [Matthews v. Matthews](#), 725 S.W.2d 275 (Tex. App. Houston 1st Dist. 1986), writ refused n.r.e., (July 8, 1987).

² [In re Sea Turtle Cinemas, Inc.](#), 440 B.R. 438 (Bankr. D. S.C. 2010) (applying South Carolina law; whether, considering all of the circumstances, one party could not exercise his free will due to other party's threatening or wrongful behavior); [Balling v. Finch](#), 203 Cal. App. 2d 413, 21 Cal. Rptr. 490 (2d Dist. 1962).

³ [Thompson Crane & Trucking Co. v. Eyman](#), 123 Cal. App. 2d 904, 267 P.2d 1043 (4th Dist. 1954).

⁴ [Leeper v. Beltrami](#), 53 Cal. 2d 195, 1 Cal. Rptr. 12, 347 P.2d 12, 77 A.L.R.2d 803 (1959).

⁵ [Orkin Exterminating Co. v. Gulf Coast Rice Mills](#), 362 S.W.2d 159 (Tex. Civ. App. Houston 1962), writ refused n.r.e.,

(Mar. 6, 1963).

⁶ [Rizzi v. Fanelli, 63 A.2d 872 \(Mun. Ct. App. D.C. 1949\).](#)

⁷ [Western Natural Gas Co. v. Cities Service Gas Co., 57 Del. 436, 201 A.2d 164 \(1964\).](#)
As to the requirements for summary judgment, generally, see [Am. Jur. 2d, Summary Judgment §§ 1 et seq.](#)

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II. Undue Influence

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A. In General


§ 36. Generally; definitions and distinctions


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"Undue influence" is not a tort but rather a common law doctrine used to avoid and recover inter vivos and testamentary transfers of property made by vulnerable donors and testators to persons who connived to obtain such property by various wrongful means.¹ "Undue influence" has been defined as the exercise of sufficient control over the person, the validity of whose act is brought in question, to destroy that person's free agency and constrain him or her to do something he or she would not have done if that control had not been exercised.² In other words, undue influence is influence that deprives one person of his or her freedom of choice or overcomes his or her will or free agency³ and substitutes the will of another in its place,⁴ precludes the exercise of free and deliberate judgment,⁵ or coerces a person into doing something that he or she does not want to do⁶ or would not have done except for the influence.⁷ The essence of undue influence is that the will of the influencing party so overpowered the will of the other party that the other party's act essentially became the act of the influencing party.⁸

The focus of an undue influence inquiry is on the conduct of the person allegedly exercising undue influence and whether that person gained an unfair advantage by devices which reasonable people regard as improper.⁹ The hallmark of undue influence is high pressure that works on mental, moral, or emotional weakness, and it is sometimes referred to as overpersuasion.¹⁰ Something must operate upon the mind of a person allegedly unduly influenced which has a controlling effect sufficient to destroy the person's free agency and to render the instrument not properly an expression of the person's wishes but rather the expression of the wishes of another or others; it is the substitution of the mind of the person exercising the influence for the mind of the person executing the instrument, causing him or her to make the instrument which he or she otherwise would not have made.¹¹ According to the Restatement, undue influence is unfair persuasion of a person who is dominated by the person exercising the persuasion or who, because of the relation between them, is justified in assuming that that person will not act in a manner inconsistent with his or her welfare.¹²

The elements of undue influence include a susceptible party, another's opportunity to exert influence, improper influence that

has been exerted or attempted, and a result showing the effect of the improper influence.¹³ Similarly stated, a claim of undue influence is comprised of four elements: (1) an unnatural disposition has been made (2) by a person susceptible to undue influence to the advantage of someone (3) with an opportunity to exercise undue influence and (4) who in fact has used that opportunity to procure the contested disposition through improper means.¹⁴ To set aside a transfer on the grounds of undue influence, the undue influence must be present at the time the transfer is made.¹⁵

Undue influence has been described as a species of duress,¹⁶ but it has also been described as a species of fraud¹⁷ or constructive fraud.¹⁸ However, it is not necessary to prove fraud to prove undue influence although fraudulent conduct may often be present.¹⁹

The exertion of undue influence is usually a subtle thing and by its very nature usually involves an extended course of dealings and circumstances.²⁰

Observation:

The mere act of influencing a person is insufficient to establish undue influence.²¹

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Footnotes

- ¹ In re Freeland, 360 B.R. 108 (Bankr. D. Md. 2006).
- ² Wheelless v. Gelzer, 780 F. Supp. 1373, 17 U.C.C. Rep. Serv. 2d 592 (N.D. Ga. 1991); Mears v. Safeco Ins. Co. of Illinois, 888 F. Supp. 2d 1048 (D. Mont. 2012) (applying Montana law); Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); Scribner v. Gibbs, 953 N.E.2d 475 (Ind. Ct. App. 2011); Decker v. Decker, 192 S.W.3d 648 (Tex. App. Fort Worth 2006).
- ³ Howe v. Palmer, 80 Mass. App. Ct. 736, 956 N.E.2d 249 (2011); Nelson v. Holland, 776 N.W.2d 446 (Minn. Ct. App. 2009); Kirchoff v. Hutchison, 403 S.W.3d 109 (Mo. Ct. App. E.D. 2013); In re Baby M., 277 Mont. 211, 921 P.2d 857 (1996); In re Estate of Stockdale, 196 N.J. 275, 953 A.2d 454 (2008); Hearst v. Hearst, 50 A.D.3d 959, 857 N.Y.S.2d 596 (2d Dep't 2008); Ayers v. Shaffer, 286 Va. 212, 748 S.E.2d 83 (2013).
- ⁴ In re Copelan, 250 Ga. App. 856, 553 S.E.2d 278 (2001) (overruled on other grounds by, Williams General Corp. v. Stone, 279 Ga. 428, 614 S.E.2d 758 (2005)); In re Marriage of Shanks, 758 N.W.2d 506 (Iowa 2008); In re Succession of Gilbert, 857 So. 2d 493 (La. 2003); Fisher v. Schefers, 656 N.W.2d 592 (Minn. Ct. App. 2003); In re Estate of Cass, 143 N.H. 57, 719 A.2d 595 (1998); Seymour v. American Engine & Grinding Co., 956 S.W.2d 49 (Tex. App. Houston 14th Dist. 1996), writ denied, (Oct. 16, 1997).
- ⁵ Copley v. Copley, 128 N.C. App. 658, 496 S.E.2d 611 (1998); Kitsap Bank v. Denley, 177 Wash. App. 559, 312 P.3d 711 (Div. 2 2013).
- ⁶ Tetrault v. Mahoney, Hawkes & Goldings, 425 Mass. 456, 681 N.E.2d 1189 (1997); McPeak v. McPeak, 233 Mich. App. 483, 593 N.W.2d 180 (1999).
- ⁷ Rawlings v. John Hancock Mut. Life Ins. Co., 78 S.W.3d 291 (Tenn. Ct. App. 2001); Cooper v. Cochran, 288 S.W.3d 522 (Tex. App. Dallas 2009).
- ⁸ Ex parte Estelle, 982 So. 2d 1086 (Ala. 2007).
- ⁹ Harris v. Jourdan, 218 Or. App. 470, 180 P.3d 119 (2008).

- 10 Starr v. Starr, 189 Cal. App. 4th 277, 116 Cal. Rptr. 3d 813 (2d Dist. 2010).
- 11 Seagraves v. Seagraves, 206 N.C. App. 333, 698 S.E.2d 155 (2010).
- 12 Restatement Second, Contracts § 177(1).
- 13 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); Mendenhall v. Judy, 671 N.W.2d 452 (Iowa 2003); Howe v. Palmer, 80 Mass. App. Ct. 736, 956 N.E.2d 249 (2011); Seagraves v. Seagraves, 206 N.C. App. 333, 698 S.E.2d 155 (2010); Lah v. Rogers, 125 Ohio App. 3d 164, 707 N.E.2d 1208 (11th Dist. Lake County 1998); Marchant v. Cook, 967 P.2d 551 (Wyo. 1998).
- 14 In re Estate of Sharis, 83 Mass. App. Ct. 839, 990 N.E.2d 98 (2013).
- 15 Mendenhall v. Judy, 671 N.W.2d 452 (Iowa 2003).
- 16 Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).
- 17 Fortis Benefits Ins. Co. v. Pinkley, 926 So. 2d 981 (Ala. 2005); Cousatte v. Lucas, 35 Kan. App. 2d 858, 136 P.3d 484 (2006); In re Hollenbeck's Will, 65 Misc. 2d 796, 318 N.Y.S.2d 604 (Sur. Ct. 1969), order aff'd, 37 A.D.2d 922, 325 N.Y.S.2d 736 (4th Dep't 1971); Lawler v. Speaker, 446 S.W.2d 888 (Tex. Civ. App. Amarillo 1969), writ refused n.r.e., (Dec. 31, 1969).
- 18 In re Hamilton, 480 B.R. 913 (Bankr. N.D. Ind. 2012) (applying Indiana law); Johnson v. Keener, 370 So. 2d 265 (Ala. 1979); O'Neil v. Spillane, 45 Cal. App. 3d 147, 119 Cal. Rptr. 245 (1st Dist. 1975); Cyr v. Cote, 396 A.2d 1013 (Me. 1979); Nuckols v. Nuckols, 228 Va. 25, 320 S.E.2d 734 (1984).
As to constructive fraud, generally, see Am. Jur. 2d, Fraud and Deceit § 9.
- 19 In re Freeland, 360 B.R. 108 (Bankr. D. Md. 2006).
- 20 In re Estate of Johnson, 340 S.W.3d 769 (Tex. App. San Antonio 2011), review denied, (Apr. 20, 2012).
- 21 In re Ingersoll Trust, 950 A.2d 672 (D.C. 2008).

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II. Undue Influence

A. In General


§ 37. Requisites and factors


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A.L.R. Library

What constitutes undue influence in obtaining a parent's consent to adoption of child, 50 A.L.R.3d 918

Undue influence in nontestamentary gift from patient to physician, nurse, or other medical practitioner, 70 A.L.R.2d 591

Undue influence in nontestamentary gift to clergyman, spiritual adviser, or church, 14 A.L.R.2d 649

Trial Strategy

Undue Influence in Execution of Will, 36 Am. Jur. Proof of Facts 2d 109

Undue Influence in Obtaining Parent's Consent to Adoption of Child, 8 Am. Jur. Proof of Facts 2d 481

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 37](#) (Answer—Denial of undue influence—Plaintiff)

had independent advice)

What constitutes undue influence depends on the facts of each particular case,¹ and one case will rarely serve as a precedent for another.² The influence that the law condemns as undue is not the legitimate influence that springs from natural affection but the malign influence that results from fear, coercion, or any other cause that deprives the individual of his or her free agency.³ The power of influence normally held by one friend over another will not automatically defeat a bequest because such influence is a simple and expected consequence of human friendship and compassion.⁴ Thus, in analyzing whether influence brought to bear on a susceptible party is undue, the focus must be on whether the influence is reasonable under the circumstances.⁵

Circumstances that do not constitute undue influence, standing alone, include—

- influence, direction, insistence, or guidance of one person by another.⁶
- affection, kindness, or attachment of one person for another.⁷
- honest persuasion or argument, if the individual has the mental capacity to choose between his or her original intention and the wishes of the person doing the persuading or arguing.⁸
- one person's power, motive, and opportunity to exercise undue influence on another.⁹
- one person's severe financial difficulty.¹⁰

Among the factors to be taken into consideration in making a determination of undue influence are the age and physical and mental condition of the one alleged to have been influenced,¹¹ whether he or she had independent or disinterested advice in the transaction,¹² the donee's activity in procuring the gift or benefaction,¹³ the improvidence or unreasonableness of the gift or transaction,¹⁴ predisposition to make the transfer in question,¹⁵ the absence or inadequacy of consideration for any contract made,¹⁶ the extent of the transfer in relation to the victim's whole worth,¹⁷ the necessities and distress of the person alleged to have been influenced,¹⁸ the victim's unnatural disposition of his or her property¹⁹ or failure to provide for all of his or her children in case of a transfer to one of them,²⁰ active solicitations and persuasions by the other party,²¹ concealment of the transaction,²² and the relationship of the parties.²³

Observation:

The defense of undue influence is generally accompanied by certain characteristics which tend to create a pattern which usually involves several of the following elements: (1) discussion of the transaction at an unusual or inappropriate time, (2) consummation of the transaction in an unusual place, (3) insistent demand that the business be finished at once, (4) extreme emphasis on untoward consequences of delay, (5) the use of multiple persuaders by the dominant side against a single servient party, (6) the absence of third-party advisers to the servient party, or (7) statements that there is no time to consult financial advisers or attorneys.²⁴

CUMULATIVE SUPPLEMENT

Cases:

Guardian of farm owner failed to meet his burden to establish that owner's son exerted undue influence over owner when owner transferred the majority of her shares in company that controlled farm to her son and signed an agreement to stay on the farm as president of the company, although guardian presented expert medical testimony that showed that owner suffered from dementia; evidence presented by guardian only provided mere suspicion of undue influence and guardian failed to show

specific acts of undue influence. [Mont. Code Ann. § 28-2-407](#). [Larson v. Larson](#), 2017 MT 299, 406 P.3d 925 (Mont. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 § 48.
- 2 Mays v. Porter, 398 S.W.3d 454 (Ky. Ct. App. 2013).
- 3 Simpson v. Simpson, 2014 Ark. App. 80, 2014 WL 324555 (2014).
- 4 Heinrich v. Silvernail, 23 Mass. App. Ct. 218, 500 N.E.2d 835 (1986).
- 5 Lah v. Rogers, 125 Ohio App. 3d 164, 707 N.E.2d 1208 (11th Dist. Lake County 1998).
- 6 Henkle v. Henkle, 75 Ohio App. 3d 732, 600 N.E.2d 791 (12th Dist. Madison County 1991).
- 7 Raimi v. Furlong, 702 So. 2d 1273 (Fla. 3d DCA 1997).
- 8 In re Copelan, 250 Ga. App. 856, 553 S.E.2d 278 (2001) (overruled on other grounds by, [Williams General Corp. v. Stone](#), 279 Ga. 428, 614 S.E.2d 758 (2005)).
- 9 In re Marriage of Spiegel, 553 N.W.2d 309 (Iowa 1996); In re Estate of Erickson, 202 Mich. App. 329, 508 N.W.2d 181 (1993); [Robertson v. Robertson](#), 15 S.W.3d 407 (Mo. Ct. App. S.D. 2000); [Henkle v. Henkle](#), 75 Ohio App. 3d 732, 600 N.E.2d 791 (12th Dist. Madison County 1991).
- 10 Ferd L. Alpert Industries, Inc. v. Oakland Metal Stamping Co., 3 Mich. App. 101, 141 N.W.2d 671 (1966), judgment rev'd on other grounds, 379 Mich. 272, 150 N.W.2d 765 (1967).
- 11 § 38.
- 12 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); In re Wood's Estate, 374 Mich. 278, 132 N.W.2d 35, 5 A.L.R.3d 1 (1965); [Matter of Estate of Carano](#), 1994 OK 15, 868 P.2d 699 (Okla. 1994).
- 13 Dixon v. Bradsher, 779 S.W.2d 727 (Mo. Ct. App. S.D. 1989).
- 14 Nelson v. Holland, 776 N.W.2d 446 (Minn. Ct. App. 2009); In re Estate of Lightfield, 2009 MT 244, 351 Mont. 426, 213 P.3d 468 (2009); [Ostertag v. Donovan](#), 1958-NMSC-121, 65 N.M. 6, 331 P.2d 355, 70 A.L.R.2d 583 (1958); [Macaulay v. Wachovia Bank of South Carolina, N.A.](#), 351 S.C. 287, 569 S.E.2d 371 (Ct. App. 2002).
- 15 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009).
- 16 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); [Robertson v. Robertson](#), 15 S.W.3d 407 (Mo. Ct. App. S.D. 2000); [Foster v. Medela](#), 9 N.J. Super. 195, 75 A.2d 735 (App. Div. 1950); [Ayers v. Shaffer](#), 286 Va. 212, 748 S.E.2d 83 (2013).
- 17 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009).
- 18 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); [Indianapolis Morris Plan Corp. v. Sparks](#), 132 Ind. App. 145, 172 N.E.2d 899 (1961).
- 19 Scottrade, Inc. v. Davenport, 873 F. Supp. 2d 1306 (D. Mont. 2012) (applying Montana law); [Tetrault v. Mahoney, Hawkes & Goldings](#), 425 Mass. 456, 681 N.E.2d 1189 (1997); In re Estate of Hock, 322 S.W.3d 574 (Mo. Ct. App. S.D. 2010); In re Estate of Harmon, 2011 MT 84, 360 Mont. 150, 253 P.3d 821 (2011); [Stephenson v. Warren](#), 136

N.C. App. 768, 525 S.E.2d 809 (2000).

20 Gilliam v. Schoen, 176 Or. 356, 157 P.2d 682 (1945).

21 Gengaro v. City of New Haven, 118 Conn. App. 642, 984 A.2d 1133 (2009); Nelson v. Dodge, 76 R.I. 1, 68 A.2d 51, 14 A.L.R.2d 638 (1949).

22 Robertson v. Robertson, 15 S.W.3d 407 (Mo. Ct. App. S.D. 2000).

23 § 39.

24 Spencer v. DHI Mortg. Co., Ltd., 642 F. Supp. 2d 1153 (E.D. Cal. 2009) (applying California law); Myerchin v. Family Benefits, Inc., 162 Cal. App. 4th 1526, 76 Cal. Rptr. 3d 816 (4th Dist. 2008), as modified, (May 20, 2008) and as modified, (May 29, 2008) and (disapproved of on other grounds by, Village Northridge Homeowners Ass'n v. State Farm Fire and Cas. Co., 50 Cal. 4th 913, 114 Cal. Rptr. 3d 280, 237 P.3d 598 (2010)).

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25 Am. Jur. 2d Duress and Undue Influence § 38

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II. Undue Influence

A. In General


§ 38. Requisites and factors—Age; physical and mental condition


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[Undue influence in nontestamentary gift from patient to physician, nurse, or other medical practitioner, 70 A.L.R.2d 591](#)

[Undue influence in nontestamentary gift to clergyman, spiritual adviser, or church, 14 A.L.R.2d 649](#)

The age and physical and mental condition of the alleged victim should be taken into consideration in determining whether there was undue influence.¹ Undue influence inducing a person to execute an instrument or do some other act may be found to exist if the person is peculiarly susceptible to external pressures because of mental weakness, old age, ignorance or illiteracy, sickness, or the like.² However, the mere fact that a party is weak, infirm, or aged does not of itself suffice to show a relationship to another individual that will support a claim of undue influence although it may be a factor in determining whether the required relation existed.³

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Footnotes

¹ [Scottrade, Inc. v. Davenport](#), 873 F. Supp. 2d 1306 (D. Mont. 2012) (applying Montana law); [Gengaro v. City of New Haven](#), 118 Conn. App. 642, 984 A.2d 1133 (2009); [Mendenhall v. Judy](#), 671 N.W.2d 452 (Iowa 2003); [Miller v. Dunn](#), 184 S.W.3d 122 (Mo. Ct. App. E.D. 2006); [In re Estate of Harmon](#), 2011 MT 84, 360 Mont. 150, 253 P.3d 821 (2011); [Stephenson v. Warren](#), 136 N.C. App. 768, 525 S.E.2d 809 (2000); [Harris v. Jourdan](#), 218 Or. App. 470, 180

P.3d 119 (2008).

² [Federman v. Stanwyck](#), 63 Ohio L. Abs. 178, 108 N.E.2d 339 (Ct. App. 8th Dist. Cuyahoga County 1951); [Pollard v. El Paso Nat. Bank](#), 343 S.W.2d 909 (Tex. Civ. App. El Paso 1961), writ refused n.r.e., (June 21, 1961) (mental infirmity).

³ [Restatement Second, Contracts § 177](#), comment a.

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Duress and Undue Influence

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II. Undue Influence

A. In General

§ 39. Requisites and factors—Relationship of parties; confidential or fiduciary relation

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[Undue influence in nontestamentary gift from patient to physician, nurse, or other medical practitioner, 70 A.L.R.2d 591](#)

[Undue influence in nontestamentary gift to clergyman, spiritual adviser, or church, 14 A.L.R.2d 649](#)

The relationship of the parties is a factor to be taken into consideration in determining the existence of undue influence.¹ The absence of a fiduciary relationship is not an absolute bar to an undue influence claim if it can be shown that alleged undue influence has a different basis, such as fraud or coercion.² However, under certain circumstances, a presumption of undue influence arises from proof of a confidential or fiduciary relationship.³

A confidential relationship sufficient to support an undue influence claim may arise either as a matter of law or under the particular facts of a case.⁴ Confidential relationships sufficient to support an undue influence claim as a matter of law include relationships such as attorney-at-law and client, attorney-in-fact and the one granting the power of attorney, guardian and ward, principal and agent, pastor and parishioner, and parent and child.⁵ To support a finding of a fiduciary or confidential relationship, the evidence must show that the parties are not on equal terms⁶ or, in other words, that on the one side, there is an overmastering influence or on the other, there is weakness, dependence, or trust that is justifiably reposed.⁷ For the purpose of a claim of undue influence, a confidential relationship is created between two persons when it is established that one occupies a superior position over the other—intellectually, physically, governmentally, or morally—with the opportunity to use that superiority to the other's disadvantage.⁸ Any relation of confidence that gives one person domination over the other falls within the category of fiduciary relations.⁹

Factors that may be considered in determining the existence of a confidential relationship include—

- the victim’s advanced age,¹⁰ physical or mental debility or weakness,¹¹ or dependence on the dominant party.¹²
- whether the individuals maintain a close relationship.¹³
- whether there is a power of attorney between the individuals.¹⁴

Observation:

A spousal relationship does not automatically translate into a confidential relationship for purposes of determining the presence of undue influence.¹⁵

The Restatement describes a confidential relationship as either one person under the domination of another or one who is justified, by virtue of his or her relation with another, in assuming that the other will not act inconsistently with his or her welfare.¹⁶

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Footnotes

- ¹ Mendenhall v. Judy, 671 N.W.2d 452 (Iowa 2003); In re Estate of Erickson, 202 Mich. App. 329, 508 N.W.2d 181 (1993); In re Estate of Harmon, 2011 MT 84, 360 Mont. 150, 253 P.3d 821 (2011).
- ² In re Estate of Berry, 277 Ill. App. 3d 1088, 214 Ill. Dec. 705, 661 N.E.2d 1150 (5th Dist. 1996).
- ³ § 44.
- ⁴ Scribner v. Gibbs, 953 N.E.2d 475 (Ind. Ct. App. 2011).
- ⁵ Scribner v. Gibbs, 953 N.E.2d 475 (Ind. Ct. App. 2011).
- ⁶ Rebidas v. Murasko, 450 Pa. Super. 546, 677 A.2d 331 (1996).
- ⁷ Scribner v. Gibbs, 953 N.E.2d 475 (Ind. Ct. App. 2011); Stevens v. Estate of Smith, 19 So. 3d 764 (Miss. Ct. App. 2009); In re Estate of Smaling, 2013 PA Super 294, 80 A.3d 485 (2013); Ayers v. Shaffer, 286 Va. 212, 748 S.E.2d 83 (2013).
- ⁸ In re Estate of Smaling, 2013 PA Super 294, 80 A.3d 485 (2013).
- ⁹ Patterson v. Strickland, 133 N.C. App. 510, 515 S.E.2d 915 (1999).
- ¹⁰ Troy v. Hart, 116 Md. App. 468, 697 A.2d 113 (1997); In re Estate of Summerlin, 989 So. 2d 466 (Miss. Ct. App. 2008).
- ¹¹ Troy v. Hart, 116 Md. App. 468, 697 A.2d 113 (1997); In re Estate of Summerlin, 989 So. 2d 466 (Miss. Ct. App. 2008).
- ¹² Troy v. Hart, 116 Md. App. 468, 697 A.2d 113 (1997); In re Estate of Summerlin, 989 So. 2d 466 (Miss. Ct. App. 2008).
- ¹³ In re Estate of Summerlin, 989 So. 2d 466 (Miss. Ct. App. 2008).
- ¹⁴ In re Estate of Summerlin, 989 So. 2d 466 (Miss. Ct. App. 2008).

¹⁵ [In re Estate of Smaling, 2013 PA Super 294, 80 A.3d 485 \(2013\).](#)

¹⁶ [Restatement Second, Contracts § 177\(1\).](#)

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A. In General

§ 40. Effect

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Although it has been held that a transaction in which a gratuitous benefit is conferred on a party by another is void if the recipient has exercised undue influence to obtain it,¹ ordinarily, a contract made through undue influence is merely voidable.² Accordingly, transactions and contracts may be avoided or set aside on the ground of undue influence.³ For example, undue influence is grounds for rescission of a contract,⁴ avoidance of a will,⁵ or judicial cancellation of an instrument.⁶ Also, a presumption of intent to give ownership to the person or persons named on a joint account may be defeated by proof of undue influence.⁷

Observation:

Undue influence vitiates a gift because of the concern that the donor has done something contrary to his or her true desires.⁸

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Footnotes

¹ [Simmons v. Foster](#), 622 S.W.2d 838 (Tenn. Ct. App. 1981).

- ² Smith v. Ellison, 171 Or. App. 289, 15 P.3d 67 (2000).
- ³ Roberts-Douglas v. Meares, 624 A.2d 405 (D.C. 1992), opinion modified on reh'g on other grounds, 624 A.2d 431 (D.C. 1993); Mendenhall v. Judy, 671 N.W.2d 452 (Iowa 2003); In re Guardianship of Mowrer, 1999 MT 73, 294 Mont. 35, 979 P.2d 156 (1999); Coppley v. Coppley, 128 N.C. App. 658, 496 S.E.2d 611 (1998).
- ⁴ Am. Jur. 2d, Contracts § 221.
- ⁵ Am. Jur. 2d, Wills § 356.
- ⁶ Am. Jur. 2d, Cancellation of Instruments §§ 22 to 24.
- ⁷ In re Last Will and Testament and Estate of Dunn v. Reilly, 784 So. 2d 935 (Miss. 2001).
- ⁸ Landmark Trust (USA), Inc. v. Goodhue, 172 Vt. 515, 782 A.2d 1219 (2001).

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II. Undue Influence

A. In General


§ 41. Effect—Imposition by third person


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Generally speaking, a gift, grant, or bequest procured by the undue influence of a third person is voidable by the victim,¹ and it is immaterial whether the undue influence is exercised directly or indirectly.² However, a contract is not voidable by the victim of undue influence if the victim's manifestation of assent is induced by a person who is not a party to the transaction, and the other party to the transaction, in good faith and without reason to know of the undue influence, either gives value or relies materially on the transaction.³

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Footnotes

¹ [Stege v. Stege's Trustee](#), 237 Ky. 197, 35 S.W.2d 324 (1930); [In re Hanson's Estate](#), 169 Wash. 637, 14 P.2d 702 (1932).

² [Swenson v. Wintercorn](#), 92 Ill. App. 2d 88, 234 N.E.2d 91 (2d Dist. 1968); [Montoya v. Torres](#), 113 N.M. 105, 1991-NMCA-152, 823 P.2d 905 (1991).

³ [Restatement Second, Contracts § 177\(3\)](#).

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A. In General


§ 42. Ratification


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Under the view that a contract made under undue influence is ordinarily not void but merely voidable,¹ such a contract can be ratified, but an act does not constitute ratification if it was done while the undue influence was still effective.²

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Footnotes

¹ [§ 40.](#)

² [Agner v. Bourn, 281 Minn. 385, 161 N.W.2d 813 \(1968\); Campbell v. Prater, 64 Wyo. 293, 191 P.2d 160 \(1948\).](#)

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§ 43. Generally; pleading

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Trial Strategy

[Undue Influence in Execution of Will](#), 36 Am. Jur. Proof of Facts 2d 109

Forms

[Am. Jur. Pleading and Practice Forms, Duress and Undue Influence § 32](#) (Checklist—Drafting an allegation or a defense of undue influence)

Undue influence is generally regarded as affirmative and new matter, which must be pleaded specially.¹

It has been held that the facts constituting the circumstances of undue influence must be stated with particularity and that a general allegation of the ultimate fact of undue influence is not sufficient.² Also, it has been held that, even under notice pleading, a bare conclusory statement of undue influence may be insufficient to give the required notice.³ However, it has also been held that a general averment of undue influence is sufficient under notice pleading rules, without a specific allegation of the facts constituting the undue influence.⁴

Although undue influence is regarded by some courts as a species of fraud,⁵ for pleading purposes, a plea of fraud will not ordinarily raise the issue of undue influence.⁶

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Footnotes

- ¹ [Snyder v. Rosenbaum](#), 215 U.S. 261, 30 S. Ct. 73, 54 L. Ed. 186 (1909).
As to pleading of affirmative defenses, generally, see [Am. Jur. 2d, Pleading §§ 270 to 284, 300 to 328](#).
- ² [Jim Halsey Co., Inc. v. Bonar](#), 284 Ark. 461, 683 S.W.2d 898 (1985), opinion supplemented on denial of reh'g, 284 Ark. 461, 688 S.W.2d 275 (1985); [Kugler v. Drown](#), 119 Idaho 687, 809 P.2d 1166 (Ct. App. 1991).
- ³ [Lazzaro v. Holladay](#), 15 Mass. App. Ct. 108, 443 N.E.2d 1347 (1983).
- ⁴ [Nelson v. Covington](#), 519 A.2d 177 (D.C. 1986).
- ⁵ [§ 36](#).
- ⁶ [Loucks v. McCormick](#), 198 Kan. 351, 424 P.2d 555 (1967).

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§ 44. Burden of proof and presumptions; effect of confidential relations

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[Presumption or inference of undue influence from testamentary gift to relative, friend, or associate of person preparing will or procuring its execution, 13 A.L.R.3d 381](#)

[Undue influence in nontestamentary gift to clergyman, spiritual adviser, or church, 14 A.L.R.2d 649](#)

Trial Strategy

[Duress, Coercion, or Undue Influence in Execution of Separation Agreement, 107 Am. Jur. Proof of Facts 3d 337](#)

[Undue Influence in Execution of Will, 36 Am. Jur. Proof of Facts 2d 109](#)

As a general rule, in the absence of a confidential or fiduciary relationship between the parties to a transaction, the burden of proving undue influence is ordinarily upon the party who asserts it.¹

However, a presumption of undue influence arises if a confidential relationship is shown together with suspicious circumstances² or if there is a transaction, contract, or transfer between persons in a confidential or fiduciary relationship, and the dominant party is the beneficiary of the transaction, contract, or transfer.³ The existence of a family relationship does not, per se, create a presumption of undue influence.⁴ An undue influence claim must include more than merely the presumption that can arise from a confidential relationship.⁵

The presumption of undue influence imposes on the person receiving the benefit of a transaction, contract, or transfer the burden of proving that it was bona fide and not obtained by undue influence.⁶

Some jurisdictions have different standards, depending on whether the transfer was an inter vivos gift or by a bequest in a will. In the case of an inter vivos gift, if a confidential relationship exists between donor and donee, the gift is automatically presumptively void, and the burden rests on the donee to prove the gift is free from undue influence; but in the case of a gift by will, the presumption arises only if there has been some abuse of the confidential relationship, such as involvement in the preparation or execution of the will.⁷

In any case, the burden of proving the existence of a confidential relation as the foundation of a presumption of undue influence rests upon the party who asserts it.⁸

To prove undue influence, motive, opportunity, and the actual exercise of undue influence must be established.⁹ Thus, the claimant must produce proof of facts from which an inference can arise that the undue influence was an active factor in the transaction.¹⁰

Caution:

The existence of a confidential relationship between contracting parties is not of itself grounds for contract rescission; once found, that relationship indicates only a voidable transaction.¹¹

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- ¹ Vance v. Terrazas, 444 U.S. 252, 100 S. Ct. 540, 62 L. Ed. 2d 461, 5 Fed. R. Evid. Serv. 273 (1980); Heck v. Archer, 23 Kan. App. 2d 57, 927 P.2d 495 (1996); In re Estate of Stephens, 9 Neb. App. 68, 608 N.W.2d 201 (2000); Fritts v. Abbott, 938 S.W.2d 420 (Tenn. Ct. App. 1996).
As to the elements that must be proven, see § 36.
- ² Dixon v. Bradsher, 779 S.W.2d 727 (Mo. Ct. App. S.D. 1989); Montoya v. Torres, 113 N.M. 105, 1991-NMCA-152, 823 P.2d 905 (1991); Studniewski v. Krzyzanowski, 65 Ohio App. 3d 628, 584 N.E.2d 1297 (6th Dist. Lucas County 1989).
- ³ Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409 (2d Cir. 1999) (applying Connecticut law); Wheelless v. Gelzer, 780 F. Supp. 1373, 17 U.C.C. Rep. Serv. 2d 592 (N.D. Ga. 1991); Beinlich v. Campbell, 567 So. 2d 852 (Ala. 1990); Stewart v. Stewart, 41 A.3d 401 (Del. 2012); In re Estate of Erickson, 202 Mich. App. 329, 508 N.W.2d 181 (1993); Madden v. Rhodes, 626 So. 2d 608 (Miss. 1993); Kirchoff v. Hutchison, 403 S.W.3d 109 (Mo. Ct. App. E.D. 2013); Montoya v. Torres, 113 N.M. 105, 1991-NMCA-152, 823 P.2d 905 (1991); Brown v. Weik, 725 S.W.2d 938 (Tenn. Ct. App. 1983).
- ⁴ In re Mildred M.J., 43 A.D.3d 1391, 844 N.Y.S.2d 539 (4th Dep't 2007).
- ⁵ Kitsap Bank v. Denley, 177 Wash. App. 559, 312 P.3d 711 (Div. 2 2013).
- ⁶ Beinlich v. Campbell, 567 So. 2d 852 (Ala. 1990); Stewart v. Stewart, 41 A.3d 401 (Del. 2012); Neuman v. Trice, 2012-Ohio-4206, 978 N.E.2d 228 (Ohio Ct. App. 11th Dist. Trumbull County 2012).
As to rebuttal of the presumption, see § 45.

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- ⁷ [Roberts-Douglas v. Meares](#), 624 A.2d 405 (D.C. 1992), opinion modified on reh'g on other grounds, 624 A.2d 431 (D.C. 1993); [Madden v. Rhodes](#), 626 So. 2d 608 (Miss. 1993); [Pascale v. Pascale](#), 216 N.J. Super. 133, 523 A.2d 233 (App. Div. 1987), judgment rev'd on other grounds, 113 N.J. 20, 549 A.2d 782 (1988).
- ⁸ [Shaw v. Addison](#), 239 Iowa 377, 28 N.W.2d 816 (1947); [Klaber v. Unity School of Christianity](#), 330 Mo. 854, 51 S.W.2d 30 (1932).
- ⁹ [In re Estate of Greenwald](#), 47 A.D.3d 1036, 849 N.Y.S.2d 346 (3d Dep't 2008).
- ¹⁰ [In re Estate of Hock](#), 322 S.W.3d 574 (Mo. Ct. App. S.D. 2010).
- ¹¹ [Rebidas v. Murasko](#), 450 Pa. Super. 546, 677 A.2d 331 (1996).

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§ 45. Rebuttal of presumption of undue influence

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[Undue influence in nontestamentary gift from patient to physician, nurse, or other medical practitioner, 70 A.L.R.2d 591](#)

[Undue influence in nontestamentary gift to clergyman, spiritual adviser, or church, 14 A.L.R.2d 649](#)

The presumption of undue influence arising from transactions between those in confidential or fiduciary relationships¹ may be rebutted by competent evidence² or by clear and convincing evidence.³

To rebut the presumption of undue influence, it is necessary to show that the person alleged to have been influenced had competent and disinterested advice,⁴ or that he or she performed the act or entered into the transaction voluntarily, deliberately, and advisedly, knowing its nature and effect, and that his or her consent was not obtained by reason of the power and influence to which the relation might be supposed to give rise.⁵ Also, the presumption may be rebutted by proof that the transaction was fair, just, and equitable.⁶

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¹ § 44.

² [Gaggers v. Gibson, 180 Md. 609, 26 A.2d 395 \(1942\); Ostertag v. Donovan, 1958-NMSC-121, 65 N.M. 6, 331 P.2d 355, 70 A.L.R.2d 583 \(1958\).](#)

³ Brown v. Weik, 725 S.W.2d 938 (Tenn. Ct. App. 1983).

⁴ Logan v. Logan, 23 Kan. App. 2d 920, 937 P.2d 967 (1997); In re Wood's Estate, 374 Mich. 278, 132 N.W.2d 35, 5 A.L.R.3d 1 (1965); Matter of Estate of Carano, 1994 OK 15, 868 P.2d 699 (Okla. 1994); Childress v. Currie, 74 S.W.3d 324 (Tenn. 2002).

⁵ Ostertag v. Donovan, 1958-NMSC-121, 65 N.M. 6, 331 P.2d 355, 70 A.L.R.2d 583 (1958).

⁶ Beinlich v. Campbell, 567 So. 2d 852 (Ala. 1990).

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§ 46. Admissibility of evidence

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Proof of undue influence may be by either direct or circumstantial evidence.¹ However, undue influence is seldom established by direct evidence because such evidence is often unavailable;² it is usually established by circumstantial evidence because undue influence works in veiled and secret ways.³

Evidence relevant to the question of undue influence includes: (1) the age and physical and mental condition of the one alleged to have been influenced; (2) whether he or she had independent or disinterested advice in the transaction; (3) the providence or improvidence of the gift or transaction; (4) delay in making it known; (5) consideration or lack or inadequacy thereof for any contract made; (6) necessities and distress of the person alleged to have been influenced; (7) his or her predisposition to make the transfer in question; (8) the extent of the transfer in relation to his or her whole worth; (9) failure to provide for his or her own family in the case of a transfer to a stranger or failure to provide for all of his or her children in case of a transfer to one of them; (10) active solicitations and persuasions by the other party; and (11) the relationship of the parties.⁴

CUMULATIVE SUPPLEMENT

Cases:

Because undue influence sufficient to defeat a will is often difficult to prove with direct evidence, it may be reasonably inferred from the facts and circumstances surrounding the actor: his or her life, character, and mental condition. [In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 \(2015\).](#)

[END OF SUPPLEMENT]

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- ¹ [Armstrong v. McGee](#), 579 So. 2d 1310 (Ala. 1991); [Moore v. Smith](#), 321 Md. 347, 582 A.2d 1237 (1990); [In re Estate of Johnson](#), 340 S.W.3d 769 (Tex. App. San Antonio 2011), review denied, (Apr. 20, 2012); [Cale v. Napier](#), 186 W. Va. 244, 412 S.E.2d 242 (1991).
- ² [Matter of Estate of Olson](#), 451 N.W.2d 33 (Iowa Ct. App. 1989); [Roland v. Eibeck](#), 385 S.W.2d 37, 7 A.L.R.3d 992 (Ky. 1964); [Miles v. Caples](#), 362 Mass. 107, 284 N.E.2d 231 (1972).
- ³ [Scurry v. Cook](#), 206 Ga. 876, 59 S.E.2d 371 (1950); [In re Estate of Johnson](#), 340 S.W.3d 769 (Tex. App. San Antonio 2011), review denied, (Apr. 20, 2012).
- ⁴ [In re Estate of Conway](#), 152 Idaho 933, 277 P.3d 380 (2012).

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§ 47. Weight and sufficiency of evidence

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[Undue influence in nontestamentary gift from patient to physician, nurse, or other medical practitioner, 70 A.L.R.2d 591](#)

[Undue influence in nontestamentary gift to clergyman, spiritual adviser, or church, 14 A.L.R.2d 649](#)

A lower standard of proof of undue influence is required for wills and a higher one for contracts: in a will contest, undue influence need only be established by a preponderance of the evidence¹ while the setting aside of a contract for undue influence requires clear and convincing evidence.²

To rebut a presumption of undue influence, some jurisdictions require clear and convincing evidence,³ some require only a preponderance,⁴ and some may even require the highest standard of proof—proof beyond a reasonable doubt.⁵

Evidence that shows no more than an opportunity to influence falls short of showing the exercise of undue influence over a person.⁶

CUMULATIVE SUPPLEMENT

Cases:

Because undue influence is often difficult to prove by a will contestant with direct evidence, it may be reasonably inferred

from the facts and circumstances surrounding the actor: his or her life, character, and mental condition. [In re Estate of Barger](#), 303 Neb. 817, 931 N.W.2d 660 (2019).

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- ¹ [Looney v. Estate of Wade](#), 310 Ark. 708, 839 S.W.2d 531 (1992); [In re Estate of Gaspelin](#), 542 So. 2d 1023 (Fla. 2d DCA 1989); [In re Estate of Wagner](#), 246 Neb. 625, 522 N.W.2d 159 (1994); [In re Estate of Raedel](#), 152 Vt. 478, 568 A.2d 331 (1989).
- ² [In re Estate of Wagner](#), 246 Neb. 625, 522 N.W.2d 159 (1994).
- ³ [Dunham v. Dunham](#), 1995 WL 12524 (Conn. Super. Ct. 1995), judgment aff'd, 237 Conn. 480, 677 A.2d 436 (1996); [Matter of Will of Fankboner](#), 638 So. 2d 493 (Miss. 1994); [Oachs v. Stanton](#), 280 N.J. Super. 478, 655 A.2d 965 (App. Div. 1995); [Neuman v. Trice](#), 2012-Ohio-4206, 978 N.E.2d 228 (Ohio Ct. App. 11th Dist. Trumbull County 2012); [Matlock v. Simpson](#), 1993 WL 388302 (Tenn. Ct. App. 1993), judgment aff'd, 902 S.W.2d 384 (Tenn. 1995).
- ⁴ [Estate of Sarabia](#), 221 Cal. App. 3d 599, 270 Cal. Rptr. 560 (1st Dist. 1990); [Krischbaum v. Dillon](#), 58 Ohio St. 3d 58, 567 N.E.2d 1291 (1991).
- ⁵ [Looney v. Estate of Wade](#), 310 Ark. 708, 839 S.W.2d 531 (1992).
- ⁶ [Harmon v. Harmon](#), 2013 WL 3980458 (S.D. Tex. 2013) (applying Texas law); [In re Copelan](#), 250 Ga. App. 856, 553 S.E.2d 278 (2001) (overruled on other grounds by, [Williams General Corp. v. Stone](#), 279 Ga. 428, 614 S.E.2d 758 (2005)).

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§ 48. Trial; questions of law and fact

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West's Key Number Digest, [Trial](#)  252(17)

What constitutes undue influence is a question of fact depending on the circumstances of each particular case.¹ Generally, if there is evidence of undue influence, the question should be submitted to the jury,² but a mere suspicion of undue influence is an insufficient ground for presenting the issue to the jury.³

Whether there was a confidential relationship also is a question of fact.⁴

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¹ [Cersovsky v. Cersovsky](#), 201 Kan. 463, 441 P.2d 829 (1968); [In re Estate of Hock](#), 322 S.W.3d 574 (Mo. Ct. App. S.D. 2010); [In re Estate of Lightfield](#), 2009 MT 244, 351 Mont. 426, 213 P.3d 468 (2009); [Barbee v. Johnson](#), 190 N.C. App. 349, 665 S.E.2d 92 (2008); [Notarantonio v. Notarantonio](#), 941 A.2d 138 (R.I. 2008).

² [Skelton v. Skelton](#), 251 Ga. 631, 308 S.E.2d 838 (1983); [Okken v. Okken](#), 325 N.W.2d 264 (N.D. 1982).

³ [Matter of Estate of Herr](#), 460 N.W.2d 699 (N.D. 1990).

⁴ [Davion v. Williams](#), 352 So. 2d 804 (Miss. 1977).

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